TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1937

No. 577

STANDARD PIPE LINE COMPANY, INCORPORATED, PETITIONER,

vs.

MILLER COUNTY HIGHWAY & BRIDGE DISTRICT

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR CERTIORARI FILED OCTOBER 5, 1937

CERTIORARI GRANTED NOVEMBER 22, 1937

(33,029)

(33,029)

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[fol. a] [Caption omitted.]

[fol. 1] Citation, in usual form, showing service on David C. Arnold, filed October 6, 1925, omitted in printing.

[fol. 2]

IN UNITED STATES DISTRICT COURT, WESTERN DISTRICT OF ARKANSAS, TEXARKANA DIVISION

No. 128. Equity

STANDARD PIPE LINE COMPANY, INCORPORATED, Plaintiff,

vs.

MILLER COUNTY HIGHWAY & BRIDGE DISTRICT, Defendant

BILL OF COMPLAINT—Filed May 21, 1924

Now comes the Standard Pipe Line Company and for its cause of action against the defendant, Miller County Highway & Bridge District, alleges that the plaintiff is a corporation organized and existing under and by virtue of the laws of the State of Louisiana and is therefore a citizen of the State of Louisiana domiciled in the city of Baton Rouge, and that the defendant is a corporation organized and existing under and by virtue of Special Act No. 153 of the Acts of the Legislature of Arkansas of the year 1915, and said defendant is therefore a citizen of the state of Arkansas domiciled in Miller County and F. W. Offenhauser, Dr. R. H. T. Mann and Dr. J. R. Dale constitute the Board of Commissioners for said district, and they too are resident citizens of Texarkana, Miller County, Arkansas, which is in the Texarkana Division of the United States District Court for the Western District of Arkansas, and the matter in dispute herein, exclusive of interest and costs, exceeds the sum or value of $3,000.00 and is of a civil nature, and plaintiff invokes the jurisdiction of this court on the ground of diversity of citizenship between plaintiff and defendant, and on the further ground that the interpretation and appli-

cation of the United States Constitution is involved in this cause.

Plaintiff alleges that by said Special Act 153 of the acts of the General Assembly of the state of Arkansas of the year 1915, the defendant Road District was created a body politic for the purpose of constructing public highways within said district, one leading from Texarkana in an easterly direction to within three miles of Garland City; [fol. 3] another leading in a northeasterly direction from Texarkana to Red River; a lateral from Paup's Spur in a northwesterly direction to Index, and a few miles of road on the western boundary line of the county, said district embracing the city of Texarkana and all that land that lies north of the division line between townships 15 and 16 in said county.

Plaintiff alleges that it is engaged in the transportation of crude oil as a common carrier by means of pipe lines laid beneath the surface of the earth, and in the operation of its business it has a line of pipe entering the defendant Road District at a point in a south line of section 31, Township 15 south, range 27 West, aad running in a northwesterly direction to Mandeville and continuing in the same general direction to Red River. A plat or map is hereto attached showing the boundaries of said Road District, the location of the roads constructed, and the location of said pipe line.

Plaintiff alleges that under the authority of the act creating said district the Board of Commissioners thereof appointed E. G. Anderson, George T. Conway and J. C. Edwards as the Assessors for said district to assess the benefits to be received by each land owner by reason of the improvements, and under the pretended authority of said act said assessors made and filed with the county clerk of Miller County, Arkansas, on July 24, 1920, an assessment of benefits to accrue by reason of the construction of said highways, and in said assessment of benefits said commissioners extended against twelve miles of pipe line and telegraph line that now belong to this plaintiff the sum of $5,000.00 per mile, an aggregate assessment of benefits of $60,000.00, and said Board of Commissioners are attempting to collect annual payments based upon said assessment of benefits.

Plaintiff alleges that all of its said property is personal property and is therefore not subject to assessment for local improvements under the Constitution of Arkansas, and alleges that its said pipe line and telegraph line do not constitute any interest in real estate, and the plaintiff is not the owner of the land through which said lines run, but merely has the easement to maintain and operate a line of pipe through said lands.

Plaintiff shows that said property is assessed as personal property each year by the Arkansas Railroad Commission and is extended for the purpose of general taxation upon the personal tax books of Miller County.

[fol. 4] Plaintiff further alleges that said pipe line and telegraph line are in no manner whatever [benefited] by the construction of said highways, or any other highways, and the attempt to include said properties within said district was solely for the purpose of raising revenue and not because the same was [benefited] by said highway, and the value of said property has not been enhanced in any sum whatever by reason of the construction of said highways.

Plaintiff alleges that, as hereinbefore stated, it is engaged exclusively in the transportation of crude oil as a common carrier, receiving oil at the Oklahoma boundary line in Sevier County and transporting the same through Little River County and Miller County to the Louisiana line and it neither receives nor distributes any products in Miller County and is not [benefited] by the development of the agricultural lands within said territory, which was the purpose of the creation of said district, and in its business the highway has no value whatever.

Plaintiff alleges that said assessment against said property of this plaintiff is arbitrary, illegal, discriminatory and void, and is in violation of Article 5, Section 16, of the Constitution of Arkansas and Section 1 of the 14th Amendment to the Constitution of the United States.

Plaintiff alleges that in assessing the benefits to accrue to the lands within said district, said Board of Assessors divided the same into zones, determined by distance from the highway, and assessed uniform benefits upon all lands within the same without regard to improvements or market value; in the first $30 per acre; second $25.00 per acre, and third, $20.00 per acre; and telegraph and telephone lines

were assessed at $200.00 and $250.00 per mile, and the pipe line of this plaintiff was assessed at $5,000.00 per mile without any designated basis, and plaintiff alleges that although the pipe line of this plaintiff in said district does not occupy more than seven acres of land, and although the plaintiff does not own the lands through which said line runs, and although said lands through which said line runs are assessed by reason of said highway, there is extended against said property the grossly disproportionate and palpably arbitrary assessment of $80,000.00.

Plaintiff alleges that there is a discrimination against it and in favor of the owners of land within said district on account of the fact that the property of the plaintiff is personal property when the personal property of all other own-[fol. 5] ers of real property in said district is not taxed, and plaintiff alleges that the enforcement of said benefits will result in the denial to this plaintiff of the equal protection of the law, and will take away its property without due process of law in violation of the guaranties of the 14th amendment to the Constitution of the United States, and will further result in private property being taken for public use without just compensation therefor in violation of the 5th amendment to the Constitution of the United States.

Wherefore, plaintiff prays that defendant be restrained and enjoined from collecting or attempting to collect from this plaintiff or its said property any tax whatever on account of said highways, and that said assessment of $80,000.00 against twelve miles of pipe line and telegraph line that now belong to this plaintiff be cancelled and declared void as a cloud upon the title of plaintiff, and for such other relief to which it may be entitled in law and in equity, and in duty bound will ever pray.

I. M. Milling, Arnold & Arnold, Attorneys for Plaintiff.

Duly sworn to by F. Roy McGrew. Jurat omitted in printing.

In United States District Court

Motion to Dismiss—Filed June 23, 1924

The Plea of the Above-named Defendant, Miller County Highway & Bridge District, to the Bill in Equity of the Standard Pipe Line Company, Incorporated

The defendant, Miller County Highway & Bridge District, by protestation not confessing or acknowledging all or any part of the matters or things in the said bill in equity to be true in such manner and form as the same are therein set forth and alleged, does plead thereto and presents this its [fol. 6] plea, and for its motion to dismiss states: that the said bill in equity contains the following allegations.

"Plaintiff alleges that all of its said property is personal property and is therefore not subject to assessment for local improvements under the Constitution of Arkansas, and alleges that its said pipe line and telegraph line do not constitute any interest in real estate, and the plaintiff is not the owner of the land through which said lines run, but merely has the casement to maintain and operate a line of pipe through said lands.

Plaintiff shows that said property is assessed as personal property each year by the Arkansas Railroad Commission and is extended for the purpose of general taxation upon the personal tax books of Miller County."

"Plaintiff alleges that there is a discrimination against it and in favor of the owners of land within said district on account of the fact that the property of this plaintiff is personal property when the personal property of all other owners of real property in said district is not taxed, and plaintiff alleges that the enforcement of said benefits will result in the denial to this plaintiff of the equal protection of the law, and will take away its property without due process of law in violation of the guarantees of the 14th amendment to the Constitution of the United States, and will further result in private property being taken for public use without just compensation therefor in violation of the 5th Amendment to the Constitution of the United States."

That in truth and in fact, under the decisions of the Supreme Court of the State of Arkansas, pipe lines and telegraph lines constructed under, on and over rights of way

owned and under the control of the pipe line and telegraph companies, are real estate and are subject to assessment for local improvements and the bill of plaintiff should be dismissed, since said pipe lines and telegraph lines, being real estate, they are legally subject to the assessment for road purposes, objected to in plaintiff's bill. Defendant as alleged in the bill was created a body politic under the laws of the State of Arkansas by Special Act No. 153 of the Acts of the General Assembly of the state of Arkansas of the year 1915, for the purpose of constructing a public highway within the road district thus formed.

Said Act above mentioned was amended by Special Act No. 15 of the Acts of the General Assembly of the State of Arkansas of the year 1917.

[fol. 7] The assessment of benefits to the plaintiff's pipe line and telegraph line and all other property subject to assessment for said road district was made, as alleged in plaintiff's bill, and filed with the County Clerk of Miller County, Arkansas, on July 24, 1920. Such assessment was made as required by Sections 7 and 8 of Act No. 153 of the year 1915; and Section 6 of Act No. 15 of the year 1917.

In accordance with the terms of said Acts, any property owner aggrieved by action of the Board of Assessors, may take an appeal to the Commissioners of Miller County Highway & Bridge District within thirty days, and any property owner may take an appeal from the decision of said Commissioners to the County Court of Miller County within thirty days after the decision of said Commissioners.

It is not alleged or shown in plaintiff's bill that any appeal was taken by the plaintiff from the assessment made by said Board of Assessors and it is not alleged or shown in plaintiff's bill that any appeal was taken by plaintiff from any decision of said Commissioners to the County Court of Miller County, Arkansas; and it is not shown by plaintiff's bill that plaintiff pursued or attempted to pursue its remedy at law to obtain redress and relief from the assessment complained of in said bill.

Wherefore premises considered, this defendant prays that bill of the plaintiff be dismissed for want of equity in that the assessment complained of, is made against real estate and not personal property of the plaintiff and for the further cause that the plaintiff had a full, adequate and

complete remedy at law, and failed to pursue plaintiff's said legal remedy; and for the further cause that the time within which the plaintiff's action should be brought has long since expired, and the plaintiff is barred by limitations set forth in the above mentioned acts from bringing any action in law or in equity to set aside the assessment complained of; and the defendant specially pleads in bar to plaintiff's bill, said statute of limitations and asks that for the above mentioned reasons said bill in equity be dismissed, and for the further reason that this court of equity is without jurisdiction in this cause.

Miller County Highway & Bridge District, by Henry Moore, Jr., Solicitor and Counsel.

[fol. 8] I hereby certify that the foregoing plea is in my opinion well founded in point of law.

Henry Moore, Jr., Solicitor and Attorney for Defendant, Miller County Highway & Bridge District.

STATE OF ARKANSAS,
County of Miller:

Henry Moore, Jr., being duly sworn, deposes and says: I am the Attorney for the above mentioned defendant. The foregoing plea is true in point of fact in my opinion and is not interposed for delay.

Henry Moore, Jr.

Sworn to before me this 20th day of June, 1924. Louis Josephs, Notary Public. My commission expires Nov. 4, 1925. (Seal.)

IN UNITED STATES DISTRICT COURT

ORDER OVERRULING MOTION TO DISMISS—Filed December 10, 1924

Defendant's motion to dismiss, heretofore submitted, having been duly considered, the court being now well and sufficiently advised in the premises, doth overrule said motion.

To the action of the court in overruling said motion the defendant duly excepted at the time.

Frank. A. Youmans, Judge.

IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED AND SUBSTITUTED BILL OF COMPLAINT—Filed March 20, 1925

Comes now The Standard Pipe Line Company, complainant in the above entitled cause, and respectfully shows:

[fol. 9] 1

That complainant, The Standard Pipe Line Company, incorporated, is and was, at all times hereinafter mentioned, a corporation duly chartered, organized and doing business under the laws of the State of Louisiana, and that it is and was, at all times hereinafter mentioned, a citizen and resident of the United States and of the State of Louisiana within the meaning of the Acts of Congress pertaining to jurisdiction of the courts of the United States.

2

That the defendant, the Miller County Highway and Bridge District is a corporation, organized and existing under and by virtue of the Special Act No. 153 of the Acts of the Legislature of the State of Arkansas for the year 1915, as amended by Act 15 of the year 1917, and that said defendant is a citizen and resident of the United States and of the State of Arkansas within the meaning of the Acts of Congress pertaining to jurisdiction and of the courts of the United States, and is a citizen of Miller County, Arkansas, and of the Texarkana Division for the United States District Court for the Western District of Arkansas, and that said defendant is a body politic and capable of suing and being sued and impleaded.

3

That the amount in controversy in this cause, exclusive of interest and costs, exceeds the sum of Three Thousand Dollars ($3,000.00) and that the acts hereinafter complained of, with reference to this complainant and its property are in violation of the rights guaranteed to it by the provisions of the Constitution of the United States.

4

Complainant alleges that by the provisions of Special Act No. 153 of the Acts of the General Assembly of the State of Arkansas for the year 1915, the defendant, the Miller County Highway and Bridge District, was created as a body politic for the purpose of constructing public highways within the boundary of said district, as defined by said Acts of the General Assembly, and in pursuance thereof and in pursuance of Act 15 of the year 1917, defendant constructed highway from the city of Texarkana, running in an easterly direction to a point within three (3) miles of Garland City; another leading in a northeasterly direction from Texarkana to Red River; a lateral from [fol. 10] Paup's Spur in a northwesterly direction to Index, and in a few miles of road on the western boundary line of Miller County, said district embracing the city of Texarkana and all of that part of Miller County, Arkansas, lying north of the division line running between townships fifteen (15) and sixteen (16) in said county.

5

Complainant further alleges that under the provisions of said Special Act No. 153 of the year 1915 and Act No. 15 of the year 1917 of the State of Arkansas, the affairs of said Miller County Highway and Bridge District shall be managed and controlled and all improvements authorized shall be made by a Commission which shall be composed of three land owners, residents of said district, and by provisions of said Special Acts, E. W. Frost, J. R. Dale and Fred W. Offenhauser were appointed the Commission of said Miller County Highway and Bridge District.

6

Complainant further alleges that said Special Act No. 153 of the General Assembly of the State of Arkansas for the year 1915 further provided that said Commission should appoint three Assessors, whose duty it shall be to ascertain the value of the real property within said district, without said improvements, and also the value of all the roads, tramroads, street railroads, electric light and water plants, rights of way, telephone and telegraph pipe lines, all other franchises of whatsoever description, in any manner connected with the reality in said district without said improvement, and the value thereof as benefitted by said improvement, and shall charge against each lot, tract or parcel of real estate, railroad, tramroad, street railway, electric light and gas plants, water plants, rights of way, telephone and telegraph lines, pipe lines, and all other franchises whatsoever connected with the realty in said district, an asses-ment according to the value of the benefit that will accrue to it by reason of the construction of said highways.

7

Complainant alleges that under the authority of the said Acts, the Board of Commissioners thereof appointed E. G. Anderson, George T. Conway, and J. C. Edwards as the Assessors of said district, whose duty it was to file with the Commission a list showing the description of the property of [fol. 11] the district, the owner's name as far as same appears from the last county assessment, and such correction as they may ascertain should be made, and the valuation of each lot, tract or parcel of land, railroad, street railway, gas and electric light plant, water plant, tramroads, telephone and telegraph lines, pipe lines and all other franchises of whatsoever description in any way connected with the reality in said district without the improvement, and the valuation with the improvement, and the benefit estimated to accrue to each lot, tract or parcel of land, railroad, tramroad, street railway, gas and electric light plant, water plant, telegraph and telephone lines, pipe lines and all other franchises of whatsoever description in any way connected with the realty in said district by reason of the im-

provement, and shall file the same with the Count- Clerk of Miller County, Arkansas.

8

Complainant further states that it is a public service corporation and engaged in the business of transporting for hire crude petroleum oil by means of pipe lines laid beneath the surface of the earth and in the operation of its business it has and owns, maintains and operates a pipe line extending from the state of Oklahoma, through the State of Arkansas, to and through the state of Louisiana, and that it has a line of pipe entering the defendant's road district at a point in the south line of Section Thirty-one (31), Township Fifteen (15) South, Range Twenty-seven (27) West, and running in a northwesterly direction to Mandeville and continuing in the same general direction to the Red River. A plat or map is hereto attached showing the boundaries of said road district and the location of the roads constructed, and the location therein of the pipe lines of this complainant.

Complainant alleges that the oil which it transports through its said pipe lines located within the Miller County Highway and Bridge District is oil which it has received as a common carrier for shipment and transportation from the state of Oklahoma, through the State of Arkansas, to and through the State of Louisiana, and that in the operation of its business of transporting crude petroleum oil by means of pipe lines, it is a common carrier for hire, engaged solely in interstate commerce, and that in connection with said pipe lines it owns and maintains a telegraph line, which said telegraph line is a necessary incident to the business of transporting crude petroleum oil by means of pipe lines; that no messages to be transmitted over its said tele- [fol. 12] graph line are received or transmitted by this complainant and that said telegraph line is only used by it in connection with its transportation of crude petroleum oil in interstate commerce, and is a necessary incident thereto.

Complainant further states that it does not transport through its said pipe lines any product of the State of Arkansas, and that it does not transport through its said pipe lines any product to the State of Arkansas, and that the sole revenue which it derives from its said pipe lines

is through charges which it receives for the transportation of crude petroleum oil as a common carrier for hire, and that its said pipe lines are not and cannot be benefited by any improvement which does not prolong the life of its lines or increase the amount of the commodity which it transports through its said pipe lines; that the business of this complainant is not in any way affected and is neither increased nor decreased by the development, advancement or improvement in that part of the State of Arkansas through which its said pipe lines run and that the amount of its business and the amount of its revenue solely depends upon the transportation and movement of a commodity which is not produced in the State of Arkansas and which is not in any manner affected by any highways or bridges that may be constructed within the territory of the Miller County Highway and Bridge District, or any other improvement therein; that the material of the pipe lines of this complainant is made of rolled steel which is buried in the ground, which, in accordance with the very nature of things, it has a tendency to return to its native state, due solely to the acts of the elements of nature, and that the construction of any highways or bridges within the territory of the Miller County Highway and Bridge District will in no way prolong the life of the pipe lines of this complainant and will in no way increase their carrying capacity, and will in no way increase the amount of crude petroleum which it may have tendered to it for transportation as a common carrier by means of its pipe lines.

9

Complainant further states that its said pipe lines are laid, maintained and operated over and through lands through which it runs, which said lands are owned by persons other than this complainant, and that this complainant merely has a right to lay, maintain, operate and remove its said pipe lines through said lands, which said rights are based upon a contract which it and its predecessors have [fol. 13] procured from the land owners, and which said contract does not convey to this complainant or its predecessors any part of said land or real estate, but merely permits the right to lay, maintain, operate and remove a pipe line to be laid in no particular location, and that the rights which this complainant has under said contract ter-

minates with the termination of its occupancy of said lands by its pipe lines, and this complainant states that it does not own any of the lands on which its pipe lines are located, but merely has the right therein in the nature of a license. This complainant states that its said pipe lines are personal property, and are assessed as personal property by the Railway Commission of the State of Arkansas.

10

Complainant further alleges that the said E. C. Anderson, George T. Conway and J. C. Edwards, appointed as assessors aforesaid, under the authority of the Act of the General Assembly creating said Miller County Highway and Bridge District and the Act amendatory thereof, under the pretended authority of said Act, did make and file with the County Clerk of Miller County, Arkansas, an assessment of benefits to accrue by the reason of the construction of said highways, and that said Assessors in assessing the benefits to accrue to the lands within said Miller County Highway and Bridge District divided the same into zones, determined by the distance of said lands from the highway and assessed uniform benefits upon all lands within the same zone without regard to improvements thereon or market value thereof; that said Assessors in assessing the land in the first zone assessed the benefits at $30.00 per acre, and on the lands located in the second zone they assessed the benefits at $25.00 per acre, and on the lands in the third zone they assessed the benefits at $20.00 per acre; that said assessors assessed the benefits on telephone and telegraph lines at from $200.00 to $250.00 per mile; and that said assessors, under the pretended authority of said Acts of the General Assembly of the State of Arkansas did attempt to assess a benefit to the said pipe lines which are the property of this complainant and that although the said pipe lines are personal property, and although the said Board of Assessors had assessed the benefits by reason of said improvements to the lands through which said pipe lines are laid, and that although said improvement would not in any way or any manner prolong the life of said pipe lines, nor in any way or any manner increase their carrying capacity, nor in any way or any manner increase the revenue to be

[fol. 14] derived therefrom by the owners thereof, did under the pretended authority of said Acts attempt to assess a benefit against the pipe lines so owned by this complainant and that said Board of Assessors, so acting as aforesaid, without any designated basis, and without considering the location of said pipe lines with reference to the location of the highways to be constructed, systematically, intentionally, unlawfully and in violation of the provisions of Article 5, Section 16 of the Constitution of the State of Arkansas and in violation of the provisions of the 5th and 14th Amendments to the Constitution of the United States, did assess a benefit to said pipe lines at Five Thousand ($5,000.00) per mile, and did wrongfully, fraudulently, systematically and intentionally and in violation of the provisions of the Constitution of the State of Arkansas and the provisions of the Amendments to the Constitution of the United States, as aforesaid, assess benefits to twelve (12) miles of pipe lines and telegraph line now belonging to this complainant at an aggregate assessment of Sixty Thousand ($60,000.00) Dollars, all of which is wholly unwarranted and a flagrant abuse, grossly disproportionate and palpably arbitrary, and in discrimination against the property of this complainant and in violation of its rights and to its injury, and by reason of its arbitrary character it is a confiscation of the said property of this complainant and in volation of its rights and property guaranteed to it by the provisions of the Constitution of the United States.

Complainant further alleges that in making said attempted assessment of benefits against the said pipe lines of this complainant, the said Board of Assessors did systematically and intentionally discriminate against it and in favor of the owners of land within said district and did attempt to assess a benefit to the personal property of this complainant, whereas the personal property of all owners of real estate in said district did not have benefits assessed against it. And this complainant states that the said action of the said Board of Assessors in attempting to assess a benefit against the pipe lines of this complainant, as aforesaid, in the manner in which they did, as aforesaid, was so wholly unwarranted, unlawful, grossly disproportionate and palpably arbitrary and in discrimination against the property of this complainant; that the same constitutes fraud and is

in violation of the rights of this complainant and to its injury, and in violation of its rights and property guaranteed to it by the provisions of the Constitution of the United States.

[fol. 15] 11

Complainant further states that all of the oil which it transports through its said pipe lines as a common carrier for hire, is oil which is delivered to it by the Oklahoma Pipe Line Company, which said Oklahoma Pipe Line Company is a corporation organized and existing under and by virtue of the laws of the State of Oklahoma and is a common carrier engaged in the business of transporting crude petroleum oil by means of pipe lines for hire, and that in delivering crude petroleum oil to this complainant for transportation as a common carrier through its said pipe lines, the Oklahoma Pipe Line Company is a connecting carrier and this complainant states that the amount of oil that it may transport through its said pipe line as a common carrier in the use and enjoyment of its said pipe lines as a common carrier, is dependent wholly and entirely upon the amount of oil which is delivered to it by the Oklahoma Pipe Line Company, a connecting carrier as aforesaid. And this complainant says the oil which the Oklahoma Pipe Line Company delivers to this complainant as a connecting carrier, is oil which has been tendered to the said Oklahoma Pipe Line Company by the producers of crude petroleum oil in the oil fields in the States of Oklahoma and Kansas; that the said Oklahoma Pipe Line Company in its business as aforesaid, has many competitors and there are many competing pipe line companies; that the oil fields of the State of Kansas and Oklahoma, from which the Oklahoma Pipe Line Company receives its tenders of shipment, are served by various other pipe lines running in various directions through this part of the United States, and this complainant states that it is a well known fact that crude petroleum oil is a natural deposit; that this deposit is systematically and continually decreasing and the exhaustivity of all oil fields is a well known fact, universally accepted and that the only commodity that this complainant can transport through its said pipe lines is crude petroleum oil, and that therefore it can only engage*d* in the business of

transporting crude petroleum oil so long as the oil fields in the States of Oklahoma and Kansas continue to produce oil.

Complainant states that the benefits assessed on account of the construction of the highways in the defendant road and bridge district are permanent benefits, to be continued and enjoyed indefinitely and that by reason of the facts as aforesaid, the right or license of this complainant to lay and maintain and operate its pipe lines through the lands in the [fol. 16] defendant road and bridge district is limited in time, dependent upon the life of the oil fields which produce the crude petroleum tendered to it by its connecting carrier the Oklahoma Pipe Line Company as aforesaid, and this complainant states that when the oil deposits in the said States of Kansas and Oklahoma are exhausted, the Oklahoma Pipe Line Company will of necessity discontinue making tenders of oil to this complainant as a connecting carrier, and that the said pipe lines of this complainant will cease to function and will be of no further use to this complainant in the locality in which they are now laid and maintained, and that when said pipe lines cease to be of use to the complainant as aforesaid, it will be necessary that the same be removed and this complainant states that any right or license which it has to lay and maintain its pipe lines through the lands in the defendant road and bridge district will cease and expire upon the renewal of its said pipe lines therefrom

Wherefore, this complainant states and alleges that it has no permanent right or interest in any lands in the defendant road and bridge district which can in any way be permanently benefited by the road improvements in said defendant road and bridge district and that any license or right which this complainant has in any lands in the defendant road and bridge district are inconsequential, fanciful and intangible and incapable of in any way being [benefitted] to any extent or in any amount on account of the improvement made by said defendant road and bridge district, and this complainant says that by reason of the nature of its said pipe lines as aforesaid, and that by reason of the temporary license or right which it has to lay and maintain its lines across and through the lands in the defendant road and bridge district, and that by reason of the universal accept-

ance of the fact that the source of supply of crude petroleum which it may have tendered to it for transportation through its said pipe lines is continually and systematically being depleted and with each succeeding day is approaching absolute exhaustion and cannot be replenished, that the attempted act of the said Board of Assessors as aforesaid to assess a benefit against the property of this complainant was wrongful and fraudulent and systematically and intentionally in violation of the provisions of the Constitution of the United States, and was wholly unwarranted and a flagrant abuse, grossly disproportionate, palpably arbitrary and discriminating against the property of this complainant and by reason of its arbitrary character it is a confiscation of the said property of this complainant.

[fol. 17] 12

Complainant states that after the assessment made as aforesaid by said Board of Assessors, the Commissioners of said defendant road and bridge district, did, by resolution, charge the pipe lines of this complainant as aforesaid with an assessment of Sixty Thousand ($60,000.00) Dollars and said Commission did apportion such assessment into annual installments of Six Hundred ($600.00) Dollars each to be paid annually and this complainant further states that under the provisions of Act No. 153 and Act No. 15 the said assessment so made against the pipe lines of this complainant is a lien against the said property of this complainant, and under the provisions of said Acts, said lien is entitled to preference over all judgments, executions, encumbrances and other liens whatsoever and this complainant states that said Board has levied a tax against the said pipe lines of this complainant based upon the said purported benefits so assessed and that said taxes have been extended upon the tax books of Miller County, Arkansas, and that the same thereby create a lien and a charge upon the said pipe lines of this complainant in the said defendant road and bridge district and that the Board of Commissioners of said defendant road and bridge district unless prevented by the order of this court will enforce the collection of said tax by chancery proceedings in the Chancery Court of Miller

County, Arkansas, and such court will give judgment against such property for the amount of such taxes and the penalty thereof of twenty-five (25%) per cent and all costs of the proceedings, and said judgment will provide for a sale of the said pipe lines of this complainant by a commissioner of the court to the satisfaction of said taxes and for penalties thereon at the rate of twenty five (25%) per cent and interest thereon at the rate of six (6%) per cent per annum, all in violation of the Constitution and laws of the State of Arkansas and of the Constitution of the United States and of the rights of this complainant, thereby unlawfully interfering with interstate commerce and causing this complainant to suffer irreparable loss and injury and to become engaged in the multiplicity of actions in order to protect its rights and property or to recovery of the unlawful invasion thereof; that said assessment and extension of the taxes so made thereon against the pipe lines of this complainant as aforesaid is a lien thereon and that the same constitutes a cloud upon complainant's title thereto, which [fol. 18] said cloud will diminish the market value of said property, unless removed, and will cause the loss of said property to its owners.

13

Complainant further respectfully shows to the court that it is a public service corporation engaged in the transportation of crude petroleum oil as a common carrier for hire and is engaged in interstate commerce as aforesaid and that its said pipe lines and telegraph lines are an essential instrumentality in the performance of its duties as an interstate carrier and the levy of said tax and the sale of its property in the amount sufficient to satisfy the alleged tax and penalties above referred to, will interfere with the complainant in the performance of its duties as an interstate carrier and would prevent it from properly continuing to operate its lines and perform its duties as an interstate carrier, all in violation of the provisions of the Constitution of the United States.

14

Complainant further states that under the purported authority of said Acts of the Legislature of the State of Ar-

kansas, the Commissioners of said Defendant road and bridge district, unless prevented by an order from this court, will cause an annual tax to be extended upon the tax books of Miller County, Arkansas, against the said pipe lines of this complainant on account of the assessment of benefits against it as aforesaid, which if not paid annually when due will be attempted to be collected by the Commissioners of said defendant road and bridge district by chancery proceedings in the Chancery Court of Miller County, Arkansas, together with a penalty of twenty-five (25%) per cent and interest as aforesaid, all in violation of the constitution of the laws of the State of Arkansas and of the Constitution of the United States and of the rights of this complainant, thereby unlawfully interfering with interstate commerce, causing this complainant to suffer irreparable loss and injury and to become engaged in a multiplicity of actions in order to protect its rights and property, or to the recovery of the unlawful invasion thereof.

15

Complainant would further respectfully show to the court that in so far as said Acts of the Legislature of the State of Arkansas attempted to authorize a benefit assessment to be made against the said pipe lines and telegraph lines of this complainant as aforesaid, it was wholly unconstitutional [fol. 19] and in violation of the provisions of the 14th Amendment to the Constitution of the United States and flagrant abuse of legislative authority and by reason of its arbitrary character is a mere confiscation of property, for the reason that the said pipe lines and telegraph lines of this complainant located within the said defendant road and bridge district cannot and will not be in any way or to any extent or in any manner benefited by the improvements provided for in said acts; that the service life of the said pipe lines and telegraph lines of this complainant as aforesaid would not in any way or in any manner be lengthened or extended; that the carrying capacity of the said pipe lines of this complainant as aforesaid would not in any way or in any manner be increased by the reason of the improvements provided for in said Acts, and that the revenue to be derived by this complainant from the use of its

said pipe lines as aforesaid would not in any way or in any manner be increased by the improvements provided for in said acts, and for the reason that the value, the service life and carrying capacity of the said pipe lines of this complainant, and its business as a common carrier as aforesaid and revenue that it might realize from its business as a common carrier as aforesaid could not in any way or in any manner be affected, enhanced or increased to any extent by any of the improvements provided for in said Acts, and for the reason that the business of this complainant as aforesaid was not, is not and could not in no way be affected, and is neither increased nor decreased by the development, advancement or improvements in that part of the State of Arkansas through which its said lines run, and for the reason that it does not transport through its said pipe lines any product of the State of Arkansas and that the amount of its business and the amount of its revenue and the value of its said pipe lines solely depend upon the transportation and movement of a commodity which is not produced in the state of Arkansas, the amount and movement of which is in no manner affected by highways or bridges that may be constructed in the territory of the Miller County Highway and Bridge District or any other improvement therein and that any attempt of the Legislature of the State of Arkansas to assess a benefit against said pipe lines and telegraph lines of this complainant in the said defendant road and bridge district on account of the improvements provided for in said Acts is palpably arbitrary, a flagrant abuse, wholly unwarranted and by reason of its arbitrary character amounts to a confiscation of [fol. 20] property and violation of the 14th Amendment to the Constitution of the United States and wholly unconstitutional and void, and this complainant states that any attempt to assess a benefit against the said pipe lines and telegraph lines of this complainant under the purported authority of said Acts is likewise wholly unlawful, unwarranted, grossly disproportionate, palpably arbitrary, discriminatory and by reason of its arbitrary character is a mere confiscation of property and wholly unconstitutional and void.

Complainant would further respectfully show that under the provisions of said Acts the said Board of Assessors of said defendant road and bridge district were directed to assess a benefit on all of the classes of property mentioned in said Acts and that all complaints to said Assessors or all appeals to the Commission or to the County Clerk, the only relief provided is that the assessment may be increased or decreased and that neither the said Board of Assessors, the Commissioners of the County Court, under the provisions of said Acts No. 153 and Act No. 15 had authority to entirely eliminate any of the classes of property mentioned in said Acts from the assessment of benefits, and that whereas the attempted assessment of said pipe lines and telegraph lines of this complainant were wholly unwarranted and unlawful, the pretended remedies for appeal provided for in said Acts would and does not afford to this complainant a full and complete relief and it therefore has no adequate remedy at law, and plaintiff alleges that the assessment of alleged benefits is void for the reason that the description of the property in the assessment of alleged benefits is so vague, indefinite and uncertain that the property cannot be found or identified or located, the property being described as " '12' pipe lines, '12' tel. and tel. lines" and an assessment of Five Thousand Dollars per mile or Sixty Thousand Dollars is extended against the same.

Plaintiff alleges that neither it nor the Prairie Pipe Line Co., from which plaintiff purchased the property in Arkansas and which the owner thereof at the time of the filing of the said assessment of alleged benefits, both companies being non-residents of the state of Arkansas, had knowledge of the filing of the alleged benefits and the plaintiff purchased the said lines without any knowledge of the said assessment of the alleged benefits and neither the plaintiff nor the Prairie Pipe Line Company had opportunity to [fol. 21] contest said assessment, having no notice thereof until long after the time for appeal had expired, and plaintiff further alleges that the Secretary of the Board of the defendants did not publish the notice required by law of the filing of said assessment of alleged benefits and no notice was published which was sufficient to put the plaintiffs or

its predecessors in title on notice that its lines within the boundaries of the defendant district were included in said assessment of benefits and plaintiff denies that it was by the provisions of said Acts afforded a complete relief and alleges that it had not and does not now have adequate remedy at law.

Complainant further states that the attempted assessment of benefits against the pipe lines and telegraph lines of this complainant as aforesaid would result in irreparable injury to the complainant and for which it has no adequate remedy at law; the damage resulting from the stopping of the movement of oil through complainant's pipe lines would be uncertain and incapable of definite ascertainment, in that the amount of traffic carried from day to day is uncertain and wholly dependent upon the amount of such traffic offered by shippers; that the property of this complainant upon which said alleged and unlawful tax constitutes a lien, consists entirely of instrumentalities used by it in the business of a common carrier engaged in interstate commerce and that said tax and lien, as aforesaid, enforced by a sale of this complainant's property as aforesaid, will constitute an unlawful burden upon interstate commerce; that complainant is without adequate remedy at law; that the said attempted assessment of benefits against the property of the complainant as aforesaid and the extension of the annual tax thereon constitute a lien and a cloud upon the title of this complainant to its property which will result in irreparable injury and cause this complainant to become engaged in a multiplicity of actions in order to protect its rights and property or to recover the same, for which it has no adequate remedy at law, and that the said attempted assessment of benefits as aforesaid is so discriminatory, palpably arbitrary, unwarranted and a flagrant abuse and by reason of their arbitrary character amounts to a confiscation of property, for which this complainant has no adequate remedy at law.

Wherefore, the complainant prays that the defendant be restrained and enjoined from collecting, or attempting to [fol. 22] collect from this complainant, or from collecting or attempting to collect by enforcement of a lien upon its property, any tax whatsoever on account of the said benefits so assessed against the complainant's property as afore-

said, or on any future assessment of benefits, and that said defendant, its Board of Commissioners, Board of Assessors and its successors in office, all other [officers], agents and employees of said Miller County Highway and Bridge District be perpetually enjoined and restrained from levying any tax or assessment against the pipe lines and telegraph lines of this complainant under the provisions of Act No. 153 passed by the General Assembly of the State of Arkansas for the year 1915 and Act No. 15 of the year 1917, and that they be perpetually enjoined and restrained from attempting to enforce collection of said tax under the chancery proceedings provided for in said Special Acts No. 153 and No. 15 or any penalty or interest thereon and they be perpetually restrained and enjoined from proceeding further to assess, levy or collect any tax whatever levied against the pipe lines and telegraph lines of this complainant under the provisions of said Act No. 153 and Act No. 15 and that this complainant may have such other and further relief as it in equity and good conscience may be entitled to.

T. M. Milling, T. J. Flannelly, H. C. Black, [Plaintiffs] for Complainant. Arnold & Arnold.

[fol. 23] In United States District Court

Answer—Filed April 2, 1925

Now comes the defendant, Miller County Highway & Bridge District answering under protest and reaffirming and reasserting its motion to dismiss herein filed in this cause, for answer to the amended and substituted bill of complaint herein states:

1

It admits the plaintiff is a corporation organized and existing under the laws of the State of Louisiana and is therefore a citizen and resident of the United States.

2

It admits that this defendant is a quasi corporation organized and existing under the laws of the state of Arkan-

sas by virtue of Act No. 153, passed during the year 1915, and Act No. 15 passed during the year 1917 by the General Assembly of the State of Arkansas, and that the domicile of said defendant is in Miller County, Arkansas.

3

It denies that the amount in controversy in this cause exclusive of interest and costs exceeds the sum of Three Thousand Dollars ($3,000.00) and denies that acts complained of in plaintiff's bill are in violation of the rights guaranteed the plaintiff by the provisions of the Constitution of the United States.

4

It admits that in accordance with the authority granted by the State of Arkansas the defendant has built the roads set forth in Section 4 of plaintiff's complaint and in addition thereto has built twenty (20) miles of road to Dooley's Ferry on Red River east of Texarkana.

5

The defendant states that the present commissioners of Miller County Highway & Bridge District duly appointed, qualified and acting are F. W. Offenhauser, R. H. T. Mann and L. C. Adams.

6

The defendant admits that under the terms of the act creating said district three assessors were appointed to assess the benefits accruing to the lands, railroads, tramroads, [fol. 24] telegraph and telephone lines, pipe lines and other property within said district, and would accrue by reason of the construction of said highway.

7

This defendant admits that E. G. Anderson, George T. Conway, and J. C. Edwards were appointed assessors of the said district, and it was made their duty to file with the Commissioners a list of the property in the district and to assess against said property the benefits that was estimated to accrue to each lot, tract or parcel of land, railroad, tramroad, telegraph and telephone line, pipe line within said

district; and also to file a copy of such assessment with the county and also to file a copy of such asses-ment with the county clerk of Miller County, Arkansas.

8

This defendant admits that the plaintiff is engaged in the business of transporting petroleum oil by means of pipe lines laid underneath the earth, and that said defendant has a line or lines of pipe running through and under the earth within the confines of the defendant road district

This defendant being without sufficient information from which to form an opinion as to whether the plaintiff is a common carrier for hire states that said plaintiff may carry oil for hire for outside parties, but that its principal business is the transporting of oil for itself or for various Standard oil companies closely affiliated, connected and controlled by the owners of the pipe line company.

This defendant admits that the telegraph line owned by the plaintiff is necessary in the business of transporting crude petroleum through the plaintiff's pipe lines and is used for the purpose of communication in reference to the business of the plaintiff.

This defendant admits that no oil at present, produced within the State of Arkansas is transported through plaintiff's pipe lines located within Miller County Highway & Bridge District. It denies that the sole revenue received by the plaintiff is for transportation charges on crude oil of persons or corporations not connected or closely affiliated with the plaintiff. It denies that said pipe lines are not benefited and cannot be benefited by improved roads built by defendant and states that such roads give access to plaintiff's pipe lines and enable the plaintiff at a greatly reduced cost to maintain repair, rebuild and operate said pipe lines. [fol. 25] This defendant states that since the advent of automobiles and trucks, access to all property and especially to property of the character of the plaintiff's renders a service to same and is a material advantage to the pipe lines and telegraph lines of the plaintiff.

9

This defendant admits that the said pipe lines are laid, maintained and operated over, through and under land

owned by persons other than the plaintiff, but alleges that the plaintiff has a right of way, through, over and under said lands giving it the exclusive right for the purpose of laying, operating, maintaining and repairing said pipe lines and that under the laws of Arkansas and under the authority of the acts creating said road and bridge district, the said pipe lines are real estate and are subject to the assessment of benefits for the defendant road and bridge district.

10

This defendant admits that the land within the district is divided into zones, assessed at Thirty Dollars ($30.00) per acre in the first zone, twenty-five Dollars per acre ($25.00) in the second zone, and twenty Dollars ($20.00) per acre in the third zone, and states that the total assessment of benefits made by the assessors after due consideration, against the pipe lines of the plaintiff located within said road district amounted to an aggregate assessment of Sixty Thousand Dollars ($60,000.00).

This defendant denies that said assessment is unwarranted, arbitrary or discriminatory or in violation of any rights guaranteed to the plaintiff under the Constitution of the United States.

This defendant denies that in making said assessment the Board of Assessors discriminated against the plaintiff and in favor of the owners of land within the district and denies that the pipe lines and telephone lines of the plaintiff assessed as being [benefitted] by the road are personal property.

The first assessment of benefits was made and filed by the assessors, and afterwards a re-assessment of benefits was made by the assessors against the various lands, railroads, pipe lines, telegraph and telephone lines situate within the said district, and was filed by said assessors with the county clerk of Miller County, Arkansas, on or about April 24th, [fol. 26] 1920. This defendant states that such reassessment of benefits was the same as the original assessment save only a change of assessment of certain lands due to changes in the location of the roads as built by the commissioners; that is the assessments against lands within the various zones according to their proximity to said sev-

eral roads, was raised or lowered according to the distance of the lands from the roads as said roads were finally located and built.

The defendant alleges that the assessment of benefits against the pipe lines and telegraph lines and property of the plaintiff was not changed in said re-assessment and said assessment of benefits against plaintiff's pipe lines, telegraph lines under section 6 of Act No. 15, passed by the General Assembly of the State of Arkansas during the year 1917, was ratified and confirmed, that no action was taken by the plaintiff for many years to contest said assessment of benefits as made and ratified by the Legislature of Arkansas, and that the plaintiff is now estopped from contesting said assessment of benefits.

The plaintiff is barred by limitation under the laws of the State of Arkansas from now contesting said assessment and this defendant specially pleads the various statutes of limitation as a bar to the plaintiff's action.

11

This defendant, being without sufficient information from which to form an opinion denies that all oil delivered to plaintiff is delivered by the Oklahoma Pipe Line Company, and states that all oil carried through the pipe lines of plaintiff is oil owned or controlled or furnished by corporations, the control and management of which are all centered in a Directorate or in persons closely affiliated and so connected that the various pipe lines and oil companies, although they may be separate corporations, are for practical purposes directed as though one sole corporation. This defendant denies that the fact that certain oil fields may become depleted has any legal bearing on the question of whether the pipe lines of the said Pipe Line Company are or are not subject to taxation in the defendant road district. This defendant alleges that new oil fields are being opened from year to year and the business of producing and transporting crude oil is one of a permanent character in the states of Arkansas, Oklahoma and Louisiana, and this defendant alleges that so long as the pipe lines of the plaintiff are located on a right of way controlled by the plaintiff, through the defendant road district, that the said pipe lines

are subject to assessment for road purposes and that the [fol. 27] benefits received by making said pipe lines easy of access are actual and permanent so long as said pipe lines are located within said road district. This defendant denies that the assessment of the Board of Assessors was wrongful and fraudulent and denies that the said assessment is wholly unwarranted, grossly disproportionate or discriminatory against the property of the plaintiff or in violation of the provisions of the constitution of United States.

12

This defendant states that originally the annual installment for road purposes to be collected from the plaintiff was Six Hundred Dollars ($600.00), one per cent (1%) of the total assessment; that because of the passage of the Harrelson Act by the State of Arkansas, said assessment has been reduced and through changes in the road laws of the state of Arkansas, it is possible and probable that additional reductions in the annual installment to be collected from the plaintiff as well as all other land owners within the district will be made.

This defendant states that the matters set up in plaintiff's complaint may and should be heard and tried in a court of proper jurisdiction upon any attempt being made by defendant to collect from the plaintiff the annual installment of taxes that may accrue and that the present bill is without equity in that the plaintiffs have not pursued the remedy granted them at law to try out the matters alleged in plaintiff's complaint. This defendant denies that it is interfering or will interfere with the Interstate Commerce and transportation alleged to be conducted by the plaintiff and denies that the plaintiff will suffer any irreparable loss and injury because of any suit or suits that may be brought by defendant against plaintiff.

13

This defendant denies that the amount of the annual levy for road purposes against the pipe lines of plaintiff is such as to interfere with any instrumentality of interstate commerce; and denies that the defendant has done or is con-

templating any action that will prevent the pursuance by the plaintiff of its duties as an inter or intra state carrier.

14

This defendant denies that the collection of the annual taxes authorized by the above mentioned acts of the Legislature of the State of Arkansas against the pipe lines of the plaintiff situate within the road district is in violation [fol. 28] of the constitution of the State of Arkansas or of the constitution of the United States, or that the collection of such taxes will interfere with any interstate commerce carried on by plaintiff; and denies that the plaintiff will suffer any irreparable loss and injury because of suits to be annually brought by defendant for road assessment taxes justly and legally due by the plaintiff.

15

This defendant denies that the assessment by the defendant under the authority of the Legislature of the state of Arkansas of benefits against the pipe lines and telegraph lines of the plaintiff is unconstitutional and in violation of the 14th amendment to the constitution of the United States; and denies that said pipe lines and telegraph lines will not in any way be benefited by the roads that have been built by the defendant.

This defendant alleges that access to said pipe lines and telegraph lines for inspection, repairs, maintenance and rebuilding is of a benefit to the plaintiff and to said pipe lines and telegraph lines.

16

This defendant denies that the assessment of the plaintiff's pipe line and telegraph lines was unwarranted and unlawful and denies that the remedies for appeal provided for in said acts could not and does not afford the plaintiff full and complete relief, but alleges that by pursuing the remedies allowed under the laws of the State of Arkansas, full relief could have been had, if any illegal or unwarranted assessment of benefits had been made against any property of the plaintiff.

This defendant denies that the description of the property of the plaintiff assessed for road purposes is vague, indefinite and uncertain; and denies that the property cannot be found or identified, but states that the property assessed is the pipe lines and telegraph lines located on right of ways controlled by the plaintiff over, under and across lands within the road and bridge district.

This defendant denies that it was necessary to give to the plaintiff or to the plaintiff's predecessor, the Prairie Pipe Line Company, any official notice of the assessment of benefits made against its property other than the notice as provided in the act creating the defendant road and bridge district, that the levying of the assessment was carried out in accordance with the laws of the State of Ar- [fol. 29] kansas and of the above mentioned acts creating the district; and at the time plaintiff purchased said pipe lines the roads had been built and the assessment of benefits against said lands had been made for many years: that plaintiff had the same notice as all other land owners within the district of the filing of said assessment of benefits, which notice complied with the laws of the State of Arkansas and the acts creating said district.

17

This defendant denies that the assessment of benefits against plaintiff's pipe line and telegraph lines will result in irreparable injury to the plaintiff and denies that such assessment of benefits will stop the movement of oil through plaintiff's pipe lines; and denies that said assessment will be an unlawful tax against an instrumentality used by the plaintiff as a common carrier in the interstate commerce; and denies that the assessment of the benefits and the extension of the annual tax thereon will result in irreparable injury to the plaintiff, and denies that the plaintiff has no adequate remedy at law; and denies that such assessment of benefits is discriminatory, arbitrary, or unwarranted or will amount to a confiscation of the property of the plaintiffs.

18

Having answered fully the allegations of the plaintiff, this defendant alleges that the roads built under the author-

ity of the act creating the defendant road district have greately benefited all of the property in Miller County, rural and urban and especially have benefited the pipe lines, telegraph and telephone lines of the plaintiff situate within said road district; that said lines have been made easy of access at all seasons of the year during all kinds of weather, and that because of said improved roads' the maintenance, repair and rebuilding of said pipe lines, telegraph and telephone lines has been greatly reduced.

The benefits assessed against the plaintiff's pipe lines and telegraph and telephone lines was confirmed by Act No. 15, passed by the General Assembly of the State of Arkansas, during the year 1917; that the re-assessment made during the year 1920 did not affect the plaintiff's property and only affected a small portion of land within the district due to changes in the roads, placing certain lands in zones close to said roads and other lands in the more distant zones.

[fol. 30] This defendant alleges that for more than seven (7) years after said original assessment of benefits was made, no action was taken by plaintiff to contest same; and that the plaintiff is now estopped at law to contest the validity of said assessment.

Defendant alleges that in accordance with the terms of the Act creating the district and the amendatory Act thereto, any property owners aggrieved by the action of the Board of Assessors may take an appeal to the Commissioners of Highway and Bridge District within thirty (30) days, and any property owner thus aggrieved may take an appeal from the decision of said commissioners to the County Court of Miller County within thirty (30) days after the decision of said commissioners.

Defendant alleges that no appeal was taken from said assessment to the Commissioners of Miller County Highway and Bridge District, and no appeal was taken from any decision of said commissioners of said Miller County Highway & Bridge District to the county court of Miller County, Arkansas; that the plaintiff has not pursued or attempted to pursue its remedy at law to obtain redress and relief from the assessment complained of and that said plaintiff has no standing in a court of equity and its bill should be dismissed.

This defendant alleges that the time within which any suit or action might be brought by the plaintiff to contest the validity of assessment of benefits against its property has long since expired and that the plaintiff is barred from bringing any action at law or in equity to contest said assessment of benefits.

This defendant specially pleads the bar of the statute of limitation of the general law of the State of Arkansas, and of the special limitation applicable to the assessment of benefits under the special acts creating this highway district and state that the plaintiff's bill should be dismissed under this plea of limitation and prescription.

Wherefore premises considered this defendant prays that the bill of the plaintiff be dismissed for want of equity, in that the assessment complained of is made against real estate and not against personal property of the plaintiff, and for the further cause that the plaintiff had a full, adequate and complete remedy at law and failed to pursue said legal remedy, and for the further cause that by its failure to take [fol. 31] any action to contest the validity of said assessment, plaintiff is estopped to now bring this action and for the further cause that the said assessment of benefits has been ratified and confirmed by the Legislature of the State of Arkansas and that no contest of such ratification was brought by plaintiff within seven (7) years thereafter; and for the further cause that the time within which the plaintiff's action should have been brought has long since expired, and the plaintiff is barred by the limitations set forth in the above mentioned act and limitations of the law of the State of Arkansas from bringing any action in law or equity to set aside the assessment complained of.

And this defendant prays that with the dismissal of plaintiff's bill this defendant be granted its costs in this action expended and for all other and further equitable relief in this cause.

Miller County Highway & Bridge District, by Henry Moore, Jr., Solicitor and Counsel.

I hereby certify that the foregoing answer is in my opinion well founded in point of law.

Henry Moore, Jr.

In United States District Court

Findings of Fact and Law—Filed July 2, 1925

This cause having been submitted to the court upon the pleadings, oral and written arguments of counsel, and the court being now well and sufficiently advised in the premises, doth find:

1. That the construction of the highway has not added anything and will add nothing to the value of the property of plaintiff taxed for its construction and maintenance.

2. The construction of the highway of defendant has not added and will not add anything to the revenue which is obtained by plaintiff by the transportation of oil through its pipe lines.

3. The levy of a tax of $5,000.00 a mile upon plaintiff's right of way or pipe line is not laid upon the same plan that is followed with regard to other lands in the district.

4. The levy of $5,000.00 a mile is palpably arbitrary.

[fol. 32] 5. The alleged benefit to plaintiff's property by the construction of the highway is speculative and conjectural.

6. Plaintiff is not estopped from maintaining this suit.

7. The Act of the Legislature of Arkansas purporting to validate generally the levy of the tax made by the defendant upon the property in the District is not effective to validate the levy upon plaintiff's right of way and pipe line, because as to plaintiff's property, such levy is arbitrary.

Frank A. Youmans, Judge.

In United States District Court

Amendment to Finding of Fact No. 3—Filed August 15, 1925

Upon motion of plaintiff, of which motion defendant has had due notice, finding of fact No. 3 of findings of fact and

law heretofore filed in this cause on July 2nd, 1925, is amended to read as follows:

The levy of a tax of $5,000.00 a mile upon plaintiff's right of way, the pipe line and telegraph and telephone wires and lines in the Miller County Highway and Bridge District, is not laid upon the same plan that is followed with regard to other lands in the district.

Frank A. Youmans, Judge.

In United States District Court

[Caption omitted]

Decree—September 14, 1925

This cause having been submitted to the court upon the pleadings, oral and documentary evidence, and the oral and written arguments of Arnold & Arnold as counsel for plaintiff and Henry Moore, Jr., Counsel for defendant, on April 21st, and 22nd, 1925, and the court on this 14th day of September, 1925, being well and sufficiently advised in the premises, doth find:

1. That the construction of the highway has not added anything and will add nothing to the value of the property of plaintiff taxed for its construction and maintenance.

[fol. 33] 2. The construction of the highway of defendant has not added and will not add anything to the revenue which is obtained by plaintiff by the transportation of oil through its pipe lines.

3. The levy of a tax of $5,000.00 a mile upon plaintiff's right of way or pipe line and telegraph and telephone wires and lines in the Miller County Highway and Bridge District is not laid upon the same plan that is followed with regard to other lands in the District.

4. The said levy of $5,000.00 a mile is palpably arbitrary.

5. The alleged benefit to plaintiff's property by the construction of the highway is speculative and conjectural.

6. Plaintiff is not estopped from maintaining this suit.

7. The Act of the Legislature of Arkansas purporting to validate generally the levy of the tax made by the defendant upon the property in the District is not effective to validate the levy upon plaintiff's right of way and pipe line, because as to plaintiff's property, such levy is arbitrary.

The Court is of the opinion and finds that the relief prayed for by the plaintiff in the bill filed herein, should be granted.

It is, therefore, by the court considered, ordered, adjudged and decreed that the defendants should be and it is hereby restrained and enjoined from collecting or attempting to collect by enforcement of a lien upon its pipe lines, telegraph and telephone lines, any tax whatever on account of the alleged benefits assessed against the plaintiff's property, or on any future assessment of benefits, and that said defendant, its board of commissioners, board of assessors, their successors in office, its agents, servants and employees of said Miller County Highway & Bridge District should be and they are hereby perpetually enjoined and restrained from levying any tax or assessment against the pipe lines, telegraph and telephone lines of the plaintiff under the provisions of Act No. 153 of the Acts of the General Assembly of Arkansas for the year 1915 and Act No. 15 of the Acts of the General Assembly of Arkansas for the year 1917, and they are hereby perpetually enjoined and restrained from attempting to enforce collection of any tax under the chancery proceedings provided for in the said Acts or any interest or penalty thereon and the alleged assessment of bene-[fol. 34] fits of $5,000.00 per mile upon the plaintiff's pipe line and telephone and telegraph lines and wires were hereby enjoined, cancelled and set aside and held for naught and it is further ordered that plaintiff have and recover of and from the defendant all its costs in and about this cause expended and that it have execution therefor.

Frank A. Youmans, Judge.

In United States District Court

Order Allowing Time to File Approved Statement of Evidence—October 21, 1925

This October 21, 1925, on motion of the defendant by Henry Moore, Jr., its solicitor, it is ordered that defendant

be allowed sixty days from this date in which to file an approved statement of the evidence upon its appeal in the above entitled cause.

Frank A. Youmans, Judge.

In United States District Court

Order Further Extending Time to File Statement of Evidence—November 26, 1925

This November 20, 1925, on application of the defendant by Henry Moore, Jr., its solicitor, it is ordered that the time for filing approved statement of the evidence upon its appeal in the above entitled cause be and is hereby enlarged and extended to February 1, 1926.

Frank A. Youmans, Judge.

In United States District Court

Order Further Extending Time to File Statement of Evidence—January 25, 1926

This January 23, 1925, on application of the defendant by Henry Moore, its solicitor, it is ordered that the time within which the defendant may file the approved statement of evidence for the purpose of its appeal herein be and is hereby extended to February 12th, 1926.

Frank A. Youmans, Judge.

[fol. 35] In United States District Court

Approved Statement of Evidence—Filed February 9, 1926

Caption

Be It Remembered That on this 21st day of April A. D. 1925, the above cause coming on for hearing before the Honorable Frank A. Youmans, Judge, presiding, the plaintiff

being represented by its attorneys Arnold & Arnold and H. C. Black, Esquire, and the defendants being represented by their attorney Henry Moore, Jr., Esquire, the following proceedings were had:

T. B. Morris, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. David Arnold:

Q. Please state your name.
A. T. B. Morris.
Q. Where do you live?
A. I live in Texarkana, Texas; bookkeeper of the Texarkanian.
Q. How long have you been connected with the Texarkanian and in what capacity?
A. About twelve years as bookkeeper and general record keeper.
Q. I will ask you if that is a daily newspaper and has been for that period of time published in Texarkana, Arkansas?
A. Yes, sir.
Q. I hand you here copy of notice that bears the name of Louis Joseph and ask you if that was published in your paper?
A. This is the same notice that was copied out of the paper and it was published in 1920 on the 24th of July in the daily Texarkanian.

Mr. Arnold: I offer that in evidence.

Said notice identified as Exhibit A, being in words and figures as follows:

"Ex. A—Notice of Filing of Assessment of Benefits

Notice is hereby given that the Assessors of Miller County Highway & Bridge District have deposited the reassessment list of the lands, railroads, street railways, gas and electric lights, water, tram roads, telegraph, telephone and pipe lines and all other franchises of whatever descrip-

tion in any way connected with the realty in said district, with the County Clerks of Miller county and Hempstead [fol. 36] county, Arkansas, showing the amount of the betterments opposite each piece of property. All persons and corporations having any interest in the lands, railroads, street railways, gas and electric lights, water, tram roads, telegraph, telephone and pipe lines and all other franchises of whatever description in any way connected with the realty in the district as in said list described are hereby notified to appear before the Board of Assessors at the office of Miller County Highway & Bridge District in Rooms 436 and 437, in the State National Bank building in the City of Texarkana, Miller County, Arkansas, on the 26th day of August, 1920, and present complaints, if any they have, against the assessment of their property, or of the assessment of any other property in the district.

Given under my hand as Secretary of the Board of Commissioners and the seal thereof on this 24th day of July, 1920.

Louis Joseph, Secretary of the Miller County Highway & Bridge District. (Seal.)"

Q. Was that notice published on any other day except those two days?

A. Not according to the records.

Q. What was the circulation of the Daily Texarkanian at the time of the publication?

A. It was between 2,200 and 2,500.

Q. What was the circulation of the weekly Texarkanian at that time?

A. Approximately 1,800.

Q. What was the territory served by that paper, or what was the circulation?

A. Do you mean the local circulation?

Q. Yes.

A. Well, I don't know about the division of it.

Q. Did you have any circulation outside of Miller and Bowie Counties?

A. Not a very large circulation.

Q. Did you ever have any circulation in Independence, Kansas, or in the State of Kansas?

A. Not practically any. It would not be over one or two.

Q. Did you have any in the City of Shreveport?

A. Possibly not to exceed a dozen.

Q. I will ask you if the notice was published by the Assessors of that district about April 29, 1916?

[fol. 37] A. I located that, yes, I offered that from the files. It was published April 29th and May 6th.

Q. What was the circulation of the paper at the time of the publication of this?

A. Well, it was some less. It was in the neighborhood of two thousand.

Q. Was the territory served by the paper at that time about the same?

A. Practically the same; the variations would be principally in the local circulation.

Q. Are the Prairie Pipe Line Company, or any of its officials, subscriber to your papers at any of these two dates?

A. I couldn't be positive of that. I don't think so, just to state from memory.

Cross-examination.

By Mr. Moore:

Q. You state the Texarkanian is a paper that is generally published and distributed throughout Miller and Bowie County, and the territory adjoining the City of Texarkana, do you?

A. Yes, sir.

Q. That paper is sold on the trains, is it not?

A. Not in a regular way.

Q. You know that at times it is sold on the trains?

A. Well, it has been just at a few times at very short intervals.

Q. You don't pretend to remember or know all of the subscribers you had during the year 1920?

A. No sir, not all of them.

Q. There might have been papers that went into Kansas, Missouri or New York, that you don't know about?

A. Well, at that time I had charge of the out of town circulation. I could be positive from the records.

Q. But I mean as you remember it now without the records?

A. I couldn't state, no.

Q. Don't you know as a matter of fact that you and practically every one at various times take newspapers having articles of interest and forward them to parties outside of the state?

A. Yes sir, I do.

Q. Isn't that done frequently with the Texarkanian?

A. I would suppose so.

Q. Don't you know it is very frequently sent to Europe when we are over there traveling?

A. Yes sir.

Q. And to Chicago and different cities?

A. Yes sir.

[fol. 38] Q. During the year 1920 did you know a Mr. Hillford who lived here and was the manager of the Prairie Pipe Line Company?

A. Yes sir.

Q. Do you know whether or not he ever read the Texarkanian?

A. He was a subscriber for the Texarkanian. I couldn't say just when, but he has read it and has been a subscriber to it.

Q. And he subscribed for it to your knowledge while he was here?

A. Yes sir.

Q. Do you know whether he was general manager of the Prairie Pipe Line Co. at that time?

A. No sir, I don't.

Q. Do you know that he was connected and employed by the Prairie Pipe Line Company?

A. I know that he was connected with some pipe line company.

Q. You knew that he lived at Mandeville?

A. Yes sir.

Q. And had an office here in the State Bank building?

A. Yes, sir.

Q. Did you not, during that time, send certain of your papers to the Post Office at Mandeville, Arkansas?

A. Well, the weekly, quite a few of the weekly papers went to Mandeville.

Witness excused.

DAVID ELKINS, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination:

Q. Mr. Elkins, you are the County Clerk of Miller County, Arkansas?

A. Yes, sir.

Q. I will ask you if you have in your custody the original assessment of benefits for Miller County Highway and Bridge District?

A. I do not.

Q. Do you know where it is?

A. I do not.

Q. Who was the last person to your knowledge that had it in possession?

A. I couldn't say positively whether I ever saw the instrument or not.

Q. Is there any record showing when that book was filed in your office.

A. Not that I can find.

Q. There was a re-assessment of the benefits for that district from July 4, 1920. Is that book in your office?

[fol. 39] A. I haven't looked for that of the late date; I couldn't say positively; I don't know whether it is or not.

Q. Mr. Elkins, are you familiar with the boundaries of Miller County Highway and Bridge District?

A. I might have an idea of them, but I might not state exactly the boundary.

Q. Are you familiar with the territory embraced in that district?

A. Yes.

Q. What sort of territory is it as to being improved or unimproved?

A. Well, there is some improved land and then there is a vast acreage of unimproved.

Q. Are there houses built throughout the district?

A. Considerable.

Q. And there is a good deal of land in cultivation and a good deal that is not?

A. Yes sir.

Cross-examination.

By Mr. Moore:

Q. Where did you work during the year 1915?
A. I was working on a farm.
Q. And where during the year 1916?
A. I was on a farm.
Q. What year did you enter the County Clerk's office of Miller County?
A. It was 1919.
Q. You were there as Deputy Clerk at that time?
A. Yes, sir.
Q. You are now the elected and serving County Clerk?
A. Yes, sir.
Q. Then of your own knowledge you don't pretend to say that there was or was not an assessment list filed during the years 1915, 1916 or 1917, or any year prior to 1919, do you?
A. I couldn't say. I don't remember whether I ever saw the original assessment of benefits on file.
Q. What I meant is you were not in the office?
A. No, I was not in the office prior to 1919.
Q. And you don't remember whether you have seen it since you have been there?
A. No sir.
Q. But your testimony is not that there never has been one filed?
A. I understand one has been filed, but I don't know of my personal information.
Q. You can't find any there?
A. I have not been able to locate it.

Witness excused.

[fol. 40] Milton Oats, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Arnold:

Q. I hand you here the original papers, Mr. Oats, in what was Chancery cases in Miller County, Arkansas, Nos. 446

and 703, against the Collector of Taxes of Miller County, Arkansas, and will ask you if you identify those as being the original papers in this case?

A. They are.

Mr. Arnold: I offer them in evidence with leave to have copies made and furnished. I will state these are injunction suits brought in Miller County to enjoin the collection of taxes.

Mr. Moore: I have no objection on that ground. I do not know what the object of this is, Your Honor. That was before this act that the county and state taxes could not be received without the payment of the other taxes. We all know in case that went up and settled by the Supreme Court of Arkansas, it was settled that a collector could receive state and county taxes without receiving any road tax. That being the law, I do not know what the object is.

The Court: Very well; they may be introduced, but I think it is a bad practice to introduce the original papers from another court. There ought to have been copies made it seems to me.

Mr. Arnold: Mr. Moore's statement, Your Honor, I think is correct with reference to what happened, and therefore it would be unnecessary, I think, to put all those papers in evidence if Mr. Moore will follow up what he has suggested and allow it to go as a short statement of what these papers are, and the result of the cases in the injunction that was granted by the Chancery court of Miller County, enjoining him from refusing to take the general taxes without requiring as a condition that this special tax should be paid. That was the object of the suits, and that was the result of the suits. One of them went to the Supreme Court and the judgment of the Chancery Court was affirmed in issuing an injunction against Mr. Eason. I think there is no dispute as to what happened and if Mr. Moore is willing to do that, we will just let our statements go as facts, in reference to those cases, without introducing the whole record. This testimony goes on the question of estoppel that is pleaded, that these payments having been made previous [fol. 41] to this time, they are compulsory, but at this stage these suits being filed the pipe line company conceived the

idea they were not compelled to do it and they brought these suits.

Mr. Moore: I would say that copies of the final decrees in each of those cases may be filed in this court to show the date of the decree.

Th Court: Very well; do that.

It is agreed that in lieu of copying in full in the record the decrees referred to that the following statement may be placed in the record showing the contents thereof:

The Prairie Pipe Line Company tendered to A. J. Gurley, the then Tax Collector of Miller County, Arkansas, all general taxes for the year 1919 and improvement district assessments extended against the real estate owned by said company, but the collector refused to receive the same unless the company would also pay the amount of the assessment in favor of Miller County Highways & Bridge District, basing his action on Section 10 of Act 153, of the Acts of 1915, and Section 11, of Act 16, of the Acts of 1917, providing in substance that if the collector shall fail to collect the road taxes along with other taxes, he shall be subject to a penalty of $100.00 in each instance where he collects general taxes and fails to collect the assessments in favor of Miller County Highway & Bridge District. The Prairie Pipe Line Company instituted suit to Mandamus the Tax Collector to receive the general taxes and assessments on real estate extended against its property, and the mandamus was granted by decree, dated April 10, 1920, in the case of Prairie Pipe Line Company vs. A. J. Gurley, the then Tax Collector of Miller County, Arkansas. The Prairie Pipe Line Company also offered to pay all general taxes extended on the tax book for the year 1920 and tendered the amount of such taxes to Fincher Eason, the then collector of Miller County, but he refused to receive the same, basing his action on the same ground; and on April 9, 1921 a decree was rendered in the Chancery Court of Miller County, requiring him to receive the same. An appeal was taken from the decree to the Supreme Court of Arkansas, and being found correct it was affirmed. See Eason Collector vs. Prairie Pipe Line Company, 234 S. W. 165.

LOUIS JOSEPHS, a witness sworn on behalf of the plaintiff, testified as follows:

[fol. 42] Direct examination.

By Mr. Arnold:

Q. Please state your name?

A. Louis Josephs.

Q. What connection have you with the Miller County Highway & Bridge Improvement District?

A. Secretary, Board of Commissioners.

Q. How long have you been acting in that capacity?

A. I have since the creation of the district under the original act of 1915, and then under the separate acts of 1917.

Q. I will ask you if you have got the original assessment of benefits for that road district?

A. I have. This is the original assessment of benefits.

Q. Is this the one that I examined?

A. That is the one.

Q. Does this bear any marks, filing marks, with the county clerk?

A. No, it doesn't. The filing marks have been cut out.

Q. How do you account for that?

A. I don't account for that. I found this book in Mr. Morris Sanderson's office. I can't account for that and I don't undertake to account for that, but this is the original assessment book.

Q. I will ask you to state how you know?

A. Because this book was originally prepared in the office of Mr. John Thomas, who was employed by the Board of Commissioners to make the book. And this is the book that Mr. John Thomas made, and this is the book that was filed. I have studied about this a great deal. I will say that this is the book that has the filing mark cut out.

Q. How long has the book been in your possession?

A. Off and on the last week or so. I have seen it in Mr. Moore's office, and one time I saw it in Mr. Sanderson's.

Q. Did it bear any filing marks?

A. Not within the last month or so.

Q. Who filed it originally?

A. The Board of Commissioners.

Q. How do you know?

A. The law says—I will say, I don't know.

Q. I will ask you to open the assessment made by the Board of Commissioners on the property of the Prairie Pipe Line Co. and read what it says?

A. Prairie Pipe Line Co. valuation of poles, pipe, wire, plant, trackage, etc. in the district $59,340.00.

[fol. 43] Q. Isn't that tankage?

A. Tankage instead of trackage.

Q. Is there a comma after poles?

A. Yes.

Q. What is the assessment of benefits against that property?

A. $59,340.00.

Q. The valuation without the improvement was what?

A. $59,340.00.

Q. The total benefits?

A. A. $59,340.00.

Q. And the value with improvements was what?

A. $115,680.00.

Q. What is this figure over here under the head of benefits?

A. I don't know.

Q. Well, it speaks for itself.

Mr. Moore: Isn't that the amount that was collected the first year?

A. Possibly so, Mr. Moore. I would not say as to that. I expect that is.

Q. State what that figure is?

A. $359.60.

Q. Is that assessment book verified by the affidavit of the Board of Assessors?

A. Well, it does not show so.

Q. Is it signed?

A. No, because I stated while ago, all of that has been cut out.

The Court: Did you ever see the leaves that had been cut out?

A. Absolutely.

Q. Where was that?

A. I can't account for that.

The Court: When you saw them were they in the book?

A. Yes sir, when the book was first made.

Q. Who had the book?

A. In the County Clerk's office and in my office. It was in my office before it was filed with the County Clerk and after it was filed with the County Clerk I saw it there several times. I never took it away from there. The next I saw it, it was in Mr. Sanderson's office.

Q. Just about a week ago?

A. Oh no, I had this book out of his office fully six months ago.

Q. Six months ago?

A. I will say about that time.

[fol. 44] Q. How many leaves have been taken out of the book, Mr. Jo-ephs?

A. Well, it looks like there have been at least two, Your Honor.

Q. Are the others numbered consecutively?

A. The last number that is not taken out is 296, and it does not show that there is anything missing but two pages.

Q. I will ask you if you have the minute book of the directors of that district?

A. Yes, sir.

Q. Can you tell when the bonds were sold, and the dates of their sale?

A. I can from that record.

Q. I will ask you to answer that.

A. The first bond issue of $223,000.00 was contracted for and a mortgage placed to secure said bonds was entered in my record on the 5th day of December, 1916.

Q. Entered in full, verbatim?

A. Yes, sir; and was approved by the approving attorneys, every detail included. That was when that first issue was sold and the pledge recorded. My recollection now is Your Honor, that when this case got into litigation with reference to the separation of the bridge from the road, that the bonds were not taken and delivered until that case was settled.

Q. When was it delivered?

A. Along in 1917 after all litigation was over, and I think the act had been separated; that issue was then taken up and another issue of $177,000.00 added to it so as to

make the total $400,000.00, and the first issue was re-sold in the second pledge, included in the $177,000.00 of the second issue. That was done on March 24, 1917, my recollection is, and I gave you a memorandum on that, that on March 30, 1917, the $223,000.00 of the original issue were acknowledged, that is, the money was delivered to the Board on March 30, 1917, and the second issue of $177,000.00 that is included in this particular pledge and mortgage, was acknowledged and the funds delivered to the district, as well as I remember on April 11, 1917; that soon after that—Mr. Arnold has the dates over there, that is, when that was done.

Q. Were there other issues of bonds?

A. Yes, there were other issues. Now there was another issue of $40,000.00 later on. I wanted to state, Your Honor, that the Board sold those bonds as the cash was actually needed to do this work, so as to save the interest for tax payers, and another issue was sold on August 5, 1919. That was for $40,000.00, my recollection is, and that $40,000.00 was delivered about the same time. I can get it exact from [fol. 45] my ledger account, but there was very little delay between the sale and the delivery and the cash delivery of the bonds. Then there was a fourth issue later on as the money was needed for $60,000.00, mortgage and pledge recorded on September 24, 1920, and the cash received very soon thereafter. There was a fifth and final issue of $40,000.00. That one was $60,000.00, the fourth one, and there was the fifth and final issue of $40,000.00 for which the mortgage and pledge was recorded in my record March 15, 1922, making a total of $540,000.00 that was issued in bonds through this various periods for the building of those roads. There are now outstanding $353,500.00 of all of those bonds, the difference having matured and being paid promptly at maturity.

Q. Have you the re-assessment of benefits that was made?

A. I might say here in connection with that first assessment, Your Honor, that that book right there was filed by the Board of Assessors in my office as Secretary of the District, with the Board of Commissioners on April 29, 1916. That is what my record shows.

Q. Do you know whether it is the one that was filed with the County Clerk?

A. Yes, sir; it is the same book.

Q. I say when?

A. No, no, I won't say as to that, but some time about that time.

Q. Do you know whether any notice was given as to filing?

A. I want to give you a little explanation. When you were talking to me yesterday I had it in my mind that I had nothing to do with the filing of this notice. I worked along there and Mr. Moore came in there and called my attention to the fact that that act does not require the secretary to file the notice. I then began to look into my records to refresh my memory, and when that happened last night I began to go into the matter further and get my mind clear on it. And I find that I issued vouchers to the Texarkanian in the amount of the publication of this notice, and I think it is here now.

Q. Have you a copy of the notice?

A. No, I haven't a copy of the notice. It may be that if I could go through my files that have been accumulating nearly ten years, I could find it, but it was given Mr. Sanderson as attorney for the district. I was just secretary and that may account for the book being with him in his office recently.

Q. Who prepared this notice?

A. I signed them and had them published, and later on paid for them by authority of the board.

[fol. 46] Q. Do you know what date it was set down for hearing?

A. No; that was entirely with the discretion of the Board of Assessors.

Q. Didn't your notice give the date?

A. You had the notice.

Q. I am talking about the notice of the filing of the assessment of benefits. My question is whether or not in your notice of the filing, what date was given that the Board of Assessors would meet and hear complaints?

A. The date that the notice was given. The notice set the first day of the hearing and the Board met on that day and then met and adjourned from day to day.

Q. You don't know what that date was?

A. No, sir, except what that notice says.

Q. Now Mr. Josephs, this first assessment of benefits was made under the original act creating the road and bridge district?

A. Yes, sir, that is a fact.

Q. I will ask you whether or not they ever collected any tax assessment on the basis of that first assessment?

A. There was one collection made in 1917, for the year 1916, but if my recollection is right, that wasn't done until after the Legislature had adjourned in 1917, and had ratified and approved it. There was an assessment of the benefits levied before the legislature of 1917 met, but there was no attempt made to collect it until after the Legislature had ratified that original assessment. I might be a litle wrong about that.

Q. This big book was an assessment of benefits to accrue by reason of building a road and bridge, wasn't it, under the authority of the original act

A. I rather think so, but it may have been that it was not intended to build any bridge. I don't think the Board intended to build that bridge.

Q. Now then, was a re-assessment of benefits made in 1920?

A. Yes, sir.

Q. Where is the assessment of benefits?

A. It is here; Mr. Moore has it.

Q. This is the re-assessment book that was made in 1920. Was that book made in substitution of this assessment of benefits, the first assessment of benefits.

A. It was made for a requirement of different benefits.

Q. Didn't that take the place of this one?

A. Well, yes, it follows that if a re-assessment was made the first one was out of order.

[fol. 47] Q. I will ask you to look at the record here of the assessment of benefits as to what it shows as to Prairie Pipe Line?

A. It says $60,000.00.

Q. I want you to read it just as it appears, Mr. Josephs.

A. Prairie Pipe Line Company, 12 miles pipe line and then Prairie Pipe Line Company deeded 12 miles T. eL. telegraph and telephone line, $5,000.00 per mile, total $60,000.00.

Q. Now I would like for you to show what is the assessment against the telegraph and telephone companies and railroads and how they were arrived at in the district.

Mr. Moore: Against what, Mr. Arnold?

Mr. Arnold: Against all utilities.

A. As to how they were arrived at, you will have to ask the Board of Assessors about that.

Q. I will ask you to look particularly at assessment against the Prairie Pipe Line Company. Is that assessment in the same writing as the other writing on that page?

A. This one is done with a lighter pencil.

Q. With a lighter pencil?

A. Yes, sir.

Q. How does the one above it and the one below it compare?

A. That is done by the same man.

Q. How do you figure that this one in the middle is in different pencil?

A. I don't know. I can tell you who made all those entries if you want to know. Mr. Sanderson made those figures as attorney for the Board.

Q. I want you to account for, if you can, for the fact that this assessment against the Prairie Pipe Line Company is written in heavier pencil than the other?

A. I can't account for it. I didn't think the writing—it appears to be a little darker.

Q. Then you say Mr. Sanderson put these figures in here?

A. I think so.

Q. What did the assessors do with them?

A. Well, it speaks for itself.

Q. Did Mr. Sanderson make the assessment of benefits?

A. No, sir; but certainly there is nothing to prevent him making these figures.

Q. Where did he get the figures?

A. He didn't get them from me.

[fol. 48] Q. You don't know whether he made them up himself or not?

A. I do not, sir.

Q. Mr. Josephs, you are familiar with the boundaries of this district?

A. No sir, I am not.

Q. In a general way?

A. All of the City of Texarkana, Arkansas, and what is said to be the north half of Miller county.

Q. Describe in general terms the character of lands in it?

A. Well, it has both hill and bottom lands.

Q. Is there improved and unimproved?

—. ——.

Q. Are there a good many houses built throughout the district?

A. A good many.

Q. Who are the assessors, Mr. Josephs?

A. Those who signed that list, George Conway, our present Mayor, and Mr. E. G. Anderson. The third member of that board was Judge Edwards.

Q. Why didn't he sign it?

A. I don't know. I wasn't there.

Q. Was it ever presented to him for signature?

A. I couldn't tell you.

Q. Who were the first assessors?

A. The same gentlemen.

Q. And they are still the assessors?

A. They are still the assessors; never have been removed, not resigned or fired.

Q. Mr. Josephs, I will hand you back again the original assessment of benefits above described, and will ask you in the back of the book how many sheets are torn out there?

A. I stated awhile ago the best I could tell it shows two.

Q. How many pages are torn out just preceding page 291?

A. Possibly three.

Q. Do you know what was on these sheets here?

A. No, sir.

Q. Do you know what was on the back sheets?

A. No, sir, I just know that on some of the sheets there was [there was] the certificate of the clerk.

Q. Wouldn't it be natural that it would be blank pages?

A. That would be a conclusion; I don't know what would be natural with one set of men compared with another set of men.

Q. But at the end of the assessment of benefits there is a skip of several pages before you get to the cut out leaves?

A. That is true.

[fol. 49] Cross-examination.

By Mr. Moore:

Q. You were the secretary of the board?

A. Yes, sir.

Q. You were not a commissioner and you were not an assessor?

A. No sir.

Q. You had no administrative duties, but purely your duties were to keep a record of what took place and carry out the orders given you by the commission?

A. Yes sir, Mr. Moore; that is all.

Q. Then in so far as these assessment books are concerned, save for the filing of them, the receiving and auditing and praying of the notice of the paper of the time filed, after they had been authorized by the Board you had nothing to do with them?

A. Absolutey nothing.

Q. You have testified that you have seen that book, this very identical book in the Clerk's office with the filing mark in same?

A. Absolutely, Mr. Moore; there is no doubt about that.

Q. That was about how long ago, when you saw it in the Clerk's office?

A. I will say it hasn't been less than five or six years ago.

Q. When I, Henry Moore, Jr. commenced to search for this book as as attorney for the road district, where did you tell me that you thought the book could be found?

A. In the office of Mr. M. E. Sanderson, former attorney for the board.

Q. Did you go down there and find the book there?

A. I did.

Q. And then it was brought up to my, Henry Moore's office?

A. Yes sir.

Q. And you next saw it in your office?

A. Yes sir.

Q. And since then it has been in my office?

A. That is correct, and yesterday I went and got it out of your office and gave it to Mr. Arnold.

Q. For his inspection?

A. Yes, sir.

Q. And of your own knowedge you can give no explanation of why those sheets are removed?

A. Absolutely none. When the book was first missed I immediately recalled that it was a book similar to the book used by the collector of taxes, County Clerk of Miller County, a large, heavy red book, and I began looking for that book and to my utter astonishment I found it in the office [fol. 50] of Mr. Sanderson long after it had disappeared and I was in doubt whether that was the original book. I knew that Mr. Thomas had made the original book for the Board of Assessors, and that is the book.

Q. Questions have been asked you in reference to an alleged difference in writing of the assessment of Prairie Pipe Line Company from other public utilities in the second assessment book filed during the year 1920. You as secretary had nothing to do with the making up of that book?

A. No sir, none at all.

Q. Simply say that the notice was published?

A. And when the bill was presented by the Texarkanian, they were allowed by the Board and I issued vouchers and paid for them.

Q. You don't know, or can't explain whether or not there was a different pencil?

A. No sir; I used two pencils on my docket this morning, one dark and one that didn't write so heavy.

Q. You have been secretary of the Board ever since its organization?

A. Yes, sir.

Q. Did the Prairie Pipe Line Co. ever appear before the Board of Commissioners, or did they ever file any protest with you as secretary, against the assessment of benefits, the original assessment of benefits?

A. They did not.

Q. Did the Prairie Pipe Line Co. ever file any protest with you as the Secretary of the Board, or did they ever appear before the Board of Commissioners objecting or protesting against the second assessment of benefits?

A. They did not. The only thing I ever heard of them doing was to enjoin the collector from forcing them to pay the road tax without,—or rather making the collector accept

the general taxes without excepting the road and bridge taxes. That is the first thing I heard of their contention about this district.

Redirect examination.

By Mr. Arnold:

Q. What right did Mr. Sanderson have to that book?
A. I couldn't tell you; I don't know why he took it.
Q. Did you file this first assessment book in person?
A. With whom?
Q. The County Clerk?
A. I don't recall; I might have done so, though I would rather say I did not.
Q. Did they have a meeting on objections?
[fol. 51] A. Not in my office. I wasn't there. I know they had some hearings.
Q. Now then, Mr. Josephs, who filed this second assignment of benefits with the County clerk?
A. I will have to give you the same answer I did with the first.
Q. Did you file it?
A. I might have done so.
Q. How long have you had it?
A. The second one I went and got from the County Clerk's office myself. It came about in this way: A lot of tax payers would go to the County Clerk and want information about the assessment, and the County Clerk would invariably call me on the telephone and would ask me about those different things, and I said to him, "Mr. Elkins, the only way I can settle those things is to have that assessment book before me. If you will let me have that assessment book, I will undertake to answer those inquiries." He says: "I will be glad to do that; come and get it" and that is how that book got into my office.
Q. How long has it been in your possession?
A. I will say about a year and a half. My recollection is that that occurred soon after the taxes for 1922 were being collected in 1923.
Q. Now then, it was filed July 24, 1920?
A. Yes sir.
Q. How long did it stay up there at that time?

A. So far as I know, it stayed until I got it.

Q. Did they have a hearing on objections?

A. Mr. Arnold, I tell you I was not there. I know the Board of assessors were at the court house for the purpose of having a hearing.

Q. This notice says they were going to hold a hearing in the State National Bank?

A. Maybe that is where they heard it. I can't recall every little iota that happened five or six years ago.

Q. You don't know that you filed either one?

A. No sir.

Q. You don't know how long that stayed there?

A. Except that second one, it was there from the time it was filed until I got it, between a year and a year and a half ago.

Recross-examination.

By Mr. Moore:

Q. Certain questions have been asked you about why Mr. Morris Sanderson had the book. What position did he occupy?

[fol. 52] A. He was attorney for the road district from the organization of the District until the completion of the road and the acceptance of the construction work and quit. There was nothing to do with the local representation, and I think at that time he voluntarily left the Board as there was no need of having an attorney locally employed. He has done some work for the Board off and on since but not lately.

Q. There was no friction between the Board and Mr. Sanderson?

A. Not a bit in the world.

Q. Was not Mr. Sanderson during that same time, the agent for service of the Prairie Pipe Line Company?

Mr. Arnold: We object to it, Your Honor.

The Court: I don't know how Mr. Josephs could know anything about that.

A. During Mr. Hillford's administration of the general working of the Prairie Pipe Line here, Sanderson was his attorney.

Q. Questions have been asked you whether there were any hearings of intersted parties under this second assessment, the 1920 assessment of benefits; did not Mr. Tom Webber, Attorney, of this city then living, appear before the Board of Commissioners representing the Two States Telephone Co. and present a petition?

A. He did.

Mr. Arnold:

Q. I thought you said you were not there?

A. Mr. Moore has asked for the Board of Commissioners.

Q. Did not Mr. David Arnold, representing the Southwestern Gas & Electric Company, appear before the Commissioners requesting certain reductions?

A. He did.

Q. Did not I, Henry Moore, Jr. representing certain parties, appear before the Board of Commissioners requesting certain reductions?

A. You did.

Q. Where were [were] those hearings held?

A. In my general office and the Miller County Highway & Bridge District.

Q. In the State National Bank Building?

A. Where the Board regularly meets, and where I have an office jointly with them.

Redirect examination:

Q. Has the Prairie Pipe Line Co. paid the taxes to this district?

A. They have not paid it to me.

[fol. 53] Geo. T. Conway, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By. Mr. Arnold:

Q. Is your name Geo. T. Conway?

A. Yes, sir.

Q. Are you an assessor for Miller County Highway and Bridge District?

A. I was, and am.

Q. How long have you served in that capacity?

A. Since the district was started.

Q. And the other two assessors were E. G. Anderson and J. C. Edwards?

A. Yes sir.

Q. I hand you herewith what is said to be the original assessment of benefits and will ask you first to state how you arrived at the assessment upon lands without the corporate limits of Texarkana?

A. In making up this assessment, it was new to all of us, and we got all the information that we could from everybody, and finally we determined that the most equitable and fair way to make these assessments would be in zones outside of the city, and we found that no land would be over from three miles, or if it was more than three miles it would not be benefited. We made zone one within a mile of the road, zone 2 within 2 miles of the road, and zone 3 three miles and beyond of the road.

Q. What benefits were extended against the lands within these respective zones?

A. The first assessment?

Q. Yes.

A. Well, I couldn't tell unless I could see the records on that. The assessments were twenty, twenty-five and thirty.

Q. You mean $30.00 per acre in the first zone, $25.00 per acre in the second, and $20.00 in the third zone?

A. Yes sir, I do.

Q. You did not take into consideration the value of the land itself, but simply its location with reference to the road?

A. We thought that the benefits were all due to the location as to the road, and not the quality of the land.

Q. Did you take into consideration dwellings?

A. Only to a limited extent.

Q. To what extent?

A. None. Well, I would say none.

Q. Then an acre of land with a house on it was assessed the same as an acre of land without a house on it?

[fol. 54] A. Yes, sir.

Q. Now there is a plenty of houses throughout this district?

A. Yes, sir.

Q. And a great part of the land is cultivated, and a lot of it uncultivated?

A. Yes, it is, all this north Miller County in which there is low land.

Q. It is a fact that your sole consideration was how far it was from the road?

A. The sole consideration as to what benefits would be derived as to the location of the land to the road.

Q. How did you arrive at the assessment of utilities in this district? I will ask you to look at the assessment of benefits against Prairie Pipe Line Co., what property is it against which the benefits was extended?

A. Valuation poles, pipe, wires, plants, tankage, etc. in the district.

Q. Do you know how many poles they had in there?

A. Well, I would judge—no, I couldn't say.

Q. Do you know how much pipe they had in there?

A. Well, they come into Miller County at Red River and went out of Miller County at the lower end.

Q. That is not all in the district?

A. No, sir; but they went clear through the district.

Q. Do you know how much wire they had in there?

A. Thay had a telephone wire.

Q. Don know what their plant was?

A. The plant was at Mandeville for pumping oil from Oklahoma to Louisiana.

Q. And so forth in the district, what was embraced in that?

A. That was anything I had left with regard to wire; anything else they might have that would be taxable.

Q. How did you arrive at the benefit that you extended against that property? Did you arrive at it with reference to its proximity to the road?

A. We did not arrive at that in regard to what the acreage they had, but we arrived at that as to the valuation of the pipe line, and the others, in accordance with the others in the district, the gas and electric company, etc.

Q. I do not understand how you arrived at that in your assessment that it was benefited to the extent of $59,340.00?

A. We figured that a pipe line and what they had there, would derive that much benefit from this road.

Q. How did you figure that, did you take into consideration where it ran?

[fol. 55] A. We took into consideration, Senator, all that we thought would have any bearing.

Q. I want you to name the elements.

A. The elements were these: We considered these people, the Prairie Pipe Line Company, their pipe line and their telephone line to their pumping station, and tanks, which was practically wholly within this district, would receive benefits from this road amounting to $59,340.00.

Q. Were those pipe lines in the ground at the time you made this assessment?

A. I think one of them was since this time.

Q. When?

A. A few years ago. The records would be the best evidence of that.

Q. Does that bear the handwriting of the assessment of benefits?

A. I would say that this is Thomas' writing.

Q. This isn't Thomas' writing here (indicating) is it?

A. No, sir.

Q. The assessment against Prairie Pipe Line Co. is not in this writing?

A. I couldn't say.

Q. You do not recognize that?

A. No, I don't.

Q. What did you do with that assessment of benefits after it was completed?

A. We filed it with the Secretary.

Q. With the Secretary of the District?

A. With the Secretary of the District.

Q. Did you give any notice?

A. Yes, notice was given and a great many meetings held.

Q. Where were these meetings held?

A. The meetings when we first started to get this district up, the meetings were held at Miller County Court house. We had numerous ones, some of them were indignation meetings, and we ironed the thing out the best we could, and I guess we had a dozen meetings with the different corporations including the Missouri Pacific.

Q. You in person, took it up there and filed with the County Clerk?

A. No, my recollection is, Senator, that we filed it with the Secretary of the Board and he filed it.

Q. Then did you go get the book and bring it back? When was it you heard objections?

A. When we went to the court house we had the book. Mr. Eason was County Clerk. I got him to give me that book. We were short of funds, we were having trouble and my recollection I got this book on account of it being similar [fol. 56] to the tax books, and we got J. H. Thomas to make a copy, and this is his writing, from the tax record.

Q. Mayor, when was the date set for hearing of objections on the assessment?

A. The notice would be the best evidence.

Q. Where did you meet?

A. In the Miller County court house.

Q. Did anybody appear before that meeting?

A. Quite a few, yes sir.

Q. Local people?

A. Yes, sir.

Q. Did the Prairie Pipe Line Company, or any of its officials appear there?

A. I don't remember. I remember there were several meetings up there.

Q. This then the original assessment of benefits is the assessment of benefits to accrue to the construction of the road and bridge provided for in the original act?

A. I don't think the bridge was taken into consideration. The bridge was never built under the act.

Q. But the assessment of the benefits was made under the original act?

A. Yes sir.

Q. And provides for the construction of the road and also a bridge?

A. Yes, sir.

Q. Were you ordered to make a reassessment in the road district?

A. I think after four or five years there was a reassessment made.

Q. By whom were you ordered to make that reassessment?

A. By the Board of Commissioners.

Q. I will hand you that assessment of benefits and will ask you how the lands in the act were assessed in your re-assessment?

A. Are you speaking of the country outside of the city?

Q. Yes.

A. Why, it seems to me like the assessment was the same.

Q. Was arrived at in the same manner?

A. Yes, sir?

Q. Solely with reference to the location?

A. Solely as to the benefits to be derived at from the construction of the road.

Q. Based solely on the proximity of the land to the road?

A. Yes sir.

Q. And no other consideration entered into it?

A. Not that I know of.

Q. Now, then, I will ask you to turn to the assessment of the utilities?

A. All right, sir.

[fol. 57] Q. Now, then, what is the valuation extended against the property of the Prairie Pipe Line Company for improvements, and what with improvements, and the total benefits?

A. Prairie Pipe Line Co. 12 miles pipe line and 12 miles telegraph and telephone lines, $5,000.00 a mile, or $60,000.00.

Q. That is the total benefits, is it not?

A. That was the re-assessment.

Q. What was the value of the property without improvements, that you were required under the law to set out in the assessment book?

A. This does not show here.

Q. But it does show as to all lands outside of the city?

A. Yes, sir.

Q. How was the benefits arrived at on all lands in the city of Texarkana?

A. On advalorem basis.

Q. How do you account for the different assessment of benefits against the property of the Pipe Line Company in this assessment and in the first assessment?

A. I imagine it was only a few hundred dollars difference, and possibly the few hundred dollars was taken in there for a matter of bookkeeping.

Q. Mayor, did you assist in assessing these utilities, or Mr. Sanderson?

A. I assisted in assessing, we got all the help we could. This was an entirely new thing in this country and we didn't know where we were.

Q. Morris Sanderson wrote all this sheet with reference to utilities, didn't he?

A. It looks like his writing. Morris Sanderson helped us.

Q. Mayor, isn't it a fact that you arbitrarily put down on this pipe line a lump sum per mile?

A. That is not a fact.

Q. How did you arrive at the benefits of $5,000.00?

A. Because we thought they were benefited that much.

Q. What did you base your opinion on?

A. Many things. We thought that a pipe line coming in, and a telephone line would be a greater benefit than a telephone line located where they didn't have a road. Another thing they had the pumping station and they would use the road in going to and from their work.

Q. The Prairie Pipe Line Co. owns certain lands out here at Mandeville?

A. I am not positive of that.

Q. The benefits were assessed against those lands just like any other lands?

A. Yes, sir.

Q. Mayor, did you file this book with the County Clerk? [fol. 58] A. My recollection is we filed it with Mr. Josephs.

Q. When did you next see it after that?

A. This morning.

Q. Well, did you have any hearings upon objections.

A. There was none to this assessment, that I know of.

Q. There was no objection filed by any persons?

A. Not that I remember.

Q. Did anybody have any notice of it?

A. Notice was given, I presume.

Q. Is there anything in this assessment book, Mr. Conway, to show what the valuation of the property of the Prairie Pipe Line Co. was without the improvements?

A. None.

Q. Is there anything to show what the value of the property was with the improvements?

A. There is a total valuation here given for the Prairie Pipe Line Co.

Q. That is the total assessed benefits, is it not?

A. Yes, sir.

Q. Is there anything to show what the value of the improvements is, with the improvement?

A. No, sir, there is not.

Q. Did you ever get any help from any Pipe Line Company, or people familiar with pipe lines to help you arrive at what benefits it would receive?

A. I never got any help from a Pipe Line Company. I knew Mr. Hillford quite well. My office was right next to him during his lifetime. I knew him quite well, and there was no complaint that I know of, from the Prairie Pipe Line Co. He was in and out of my office all the time. I used to shoot with him and hunt with him. There was never any disposition from the Prairie Pipe Line Co. except to pay these taxes.

Q. Mr. Hillford did not have any supervision over that?

A. I don't know.

Q. Has the Prairie Pipe Line Co. ever paid any assessment of benefits based on this assessment of 1920?

A. I don't know sir; I don't think they would if they could get out of it.

Q. Mr. Conway, I hand you back the assessment book of 1920 and will ask you what it shows as to the real estate owned by the Prairie Pipe Line Co. or the Prairie Oil & Gas Co.

A. Prairie Oil & Gas Co. southwest northwest, 40 acres, and the south part of the northwest of the Northwest, 31.5 acres.

[fol. 59] Q. What assessment of benefits were extended against it?

A. $1,200.00 on the forty acres and $960.00 on the 31.5.

Q. You reached that assessment of benefits in the same manner as you reached the assessment of benefits on other lands in the same district?

A. I recall no distinction.

Q. In arriving at the benefits upon real estate you did not take into consideration the use to which they were put, their present use or uses to which they may be put?

A. No sir.

Q. You are familiar with the line of pipe running through that district?

A. Not exactly.

Q. You know there is a line running through there?

A. In a general way.

Q. The lands under which that pipe line runs have been assessed in the same manner as other lands?

A. I think that is true.

Q. I will ask you to explain again how you arrived at the assessed benefits of property in the city?

A. It was taken on the ad valorem basis.

Q. Basis of valuation for county and state purposes?

A. Yes.

Q. And you found the benefits on land in Texarkana to the amount it was assessed for, for general state taxation?

A. Yes, sir.

Cross-examination.

By Mr. Moore:

Q. We have used here indiscriminately Prairie Pipe Line Co. who were the former owners of this particular property and the suit is brought, and we sometimes use the Standard Pipe Line Co. It is agreed between counsel that when referring either to the Prairie Pipe Line Co. or the Standard Pipe Line Co. it is referring to the identical and same property.

Mr. Arnold: Your Honor, that is true of the testimony introduced heretofore with reference to the Prairie Pipe Line Co. because the sale from the Prairie Pipe Line Co. to the Standard Pipe Line Co. took place in December, 1922.

The Court: It will appear in the record that the present plaintiff in this case is the successor of the Prairie Pipe Line Co.

Mr. Arnold: It will appear later, yes sir.

Q. Mr. Conway, you have testified that this book which I now have before me is the original assessment book made by [fol. 60] the assessors for the first time under the act of 1915, under the act creating the district?

A. Yes, sir; I am not familiar with the date, but that was the original assessment book that was made.

Q. Now you have further testified that that assessment book after it was made, was subscribed by the assessors and afterwards filed with the County Clerk?

A. My recollection is it was filed with Mr. Josephs who was Secretary.

Q. And by him filed with the County Clerk?

A. Yes sir.

Q. You have no knowledge and cannot explain why or how these leaves on which the names of the assessors were subscribed were cut out of the book?

A. No sir; I have not seen this book since filing and protests were taken care of until this morning when it was produced in evidence.

Q. Under the original act creating the district, section 7, the Board of Assessors after being appointed, were ordered to file with the Commission a list showing a description of the property in the district, the owners' names as they appeared from the last county assessment, the valuation of each lot or parcel of land, railroad, tram-road, telegraph, telephone and pipe lines, the valuation for the improvement [—] the road district; then they were ordered to show the benefit that was estimated to accrue to each tract of land. Had the assessors a copy of such act, and did they follow that in making out the assessment?

A. Yes, sir.

Q. This happens to be page 59. There first appears the owner's name, then a description of the land, then the value of the land without the improvement, then on this particular piece of land, $30.00, the benefit per acre, then the benefit to accrue from the road which is a forty acre tract of land, multiplied by thirty, $1,200.00. That is followed throughout in making all of the assessments of benefits under the act of 1915, was it?

A. That is correct, yes sir.

Q. The assessors did not, themselves, do the clerical work on this book?

A. No sir.

Q. They employed other persons to do that for them?

A. They employed J. H. Thomas.

Q. The assessors instructed him the amount of benefits to be assessed against each tract of land and saw that that was done before signing the assessment roll?

A. That is a fact.

Q. In making up that assessment you have stated the land was divided into zones one, two and three or more miles away from the road, and a benefit given of $30.00 to [fol. 61] the first mile, $25.00 to the second, and $20.00 to the third zone. That is correct is it?

A. Yes sir, that is right.

Q. In assessing property in the City of Texarkana, you have stated you took the ad valorem assessment and assessed a benefit of the amount for which city property was assessed for county and state purposes. That is correct?

A. That is correct, yes sir.

Q. Now turn to the page where the public utilities occur and see if you did not use the same method of assessing the public utilities that you did in assessing the value of the property in the city of Texarkana, that is, take the valuation for county and state purposes and assess a benefit equal to that valuation?

A. That is a fact, yes sir, the assessment was made without improvements, total benefits, and with improvements.

Q. Now do you know at that time that the Prairie Pipe Line Company had their pumping station and large expensive improvements on the land that they owned at or near Mandeville?

A. They did, yes sir.

Q. Turn to page 31 and read a description of the property there assessed to the Prairie Pipe Line Co. What was the acreage of the property assessed to the Prairie Pipe Line Co.

A. It is assessed in the name of the Prairie Oil & Gas Co. Southwest Northwest, section 1, Township 15, Range 28, consisting of 40 acres, and the south half,—I believe the description would read south of railroad. Northwest northwest, Section 1, Township 15, Range 28, 31.5 acres, without the improvements $900.00. The total benefits were $945.00, and with the improvements $3045.00.

Q. Now that land is within the first zone, is it?

A. Yes sir, it lies right on the improved road.

Q. And at what price per acre was it assessed?

A. Thirty dollars.

Q. Then with all the benefits on that land, it was assessed just the same as unimproved farm land?

A. It was; the first assessment.

Q. The first assessment?

A. Yes sir.

Q. Under the act of 1917, when the second assessment was made, it appears a different procedure was ordered by the legislature from in the first assessment. The assessors were ordered to show the lands of the district as they now appear on the county tax books, and also to show the railroads, gas and electric light, water, telephone, telegraph and pipe lines by the mile, and opposite each piece of property shall be placed the name of the owner and the amount [fol. 62] of the betterments. Did the assessors have before them the second act at the time of making this second assessment?

A. Yes sir.

Q. I will turn here to a page, 56, and will ask you if instead of showing the full improvements as required by the first act, in this second act you showed the name of the owner, the description of the property, the valuation without the improvement and the amount of the benefits to the property?

A. That is correct.

Q. At the time of making this second assessment had the roads in the district been built?

A. Yes sir.

Q. Did you take into consideration the changes in the roads from the way as originally laid out, and the way they were actually built, in making your new assessment for the district?

A. We did, yes sir. The roads as originally laid out did not conform to the roads as built and there were some that was in zone 3 that should possibly be in zone 2, and vice versa, and these readjustments were made so there were an equal benefit according to the zone as they were finally built.

Q. In making such reassessment of benefits did you, as in the former case, take the valuation for county and state purposes in the City of Texarkana and assess a benefit of an equal amount as to the assessment for county and state purposes as the benefit?

A. In the second assessment, yes sir.

Q. In assessing the lands just as in the first assessment, did you assess lands in zone one nearest the road at $30.00 and zone 2 at $25.00, and the third mile and over, zone 3, at $20.00, using the assessment for all lands in the zone?

A. We did, yes sir.

Q. Refer to page 258. Does there appear at page 258 the same two pieces in the name of the Prairie Oil & Gas Co., located at Mandeville, one forty acre tract and one 31.5 acre tract about which you have testified in the first assessment?

A. Yes, sir.

Q. Were those two tracts of land assessed just as other tracts of land in the same zone, to-wit: at $30.00 per acre as the benefit of said land?

A. Yes sir.

Q. One at $1,200.00 and one at $960.00, the 31.5 acre tract?

A. That is a fact.

Q. At the time you made that assessment in 1920 did the assessors know that there were improvements, pump houses, tanks and other fixtures part of the real estate on that prop-
[fol. 63] erty that made it worth probably many many times more than any other piece of property in the district?

A. Yes sir, that is a fact.

Q. And yet in making the assessment you followed exactly the same zone system you did with a piece of well improved farm land?

A. Yes sir.

Q. Refer to the page where the public utilities are assessed under the second act, as I have just read, ordered the assessment of these public utilities to be made by the mile, are the various telegraph and telephone companies and the Prairie Pipe Line Co. assessed by the mile?

A. Yes sir, they are assessed by the mile.

Q. It is shown that the two railroads, the St. Louis, Iron Mountain & Southern, and the St. Louis Southwestern are not assessed on it. The second act shows that a compromise agreement had been reached with those railroads by which they paid in a lump sum in lieu of assessments, which compromise agreement was ratified by the legislature. What was the amount of such compromise agreement, if you remember, paid by each of said railroads?

A. The Missouri Pacific paid $25,000.00 in cash; the Cotton Belt, I do not recall.

Q. I think you are mistaken. In order to refresh your memory I will ask you if it was not as shown by the act, $20,000.00 that the Iron Mountain paid?

A. It seems so there from the act, and my recollection was $25,000.00, and the reason why I got that, they had a section of land over here that they sold and I happened to buy the section of land and $25,000.00 was what I paid for it, and General Kinsworthy in making this trade, said: "We are turning over this section of land to get out of paying any more road taxes." I know we paid $25,000.00 cash for the land after they had paid the bill, and this section is the same and that is the way I got the idea.

Q. At the time you were making the first assessment of benefits was your office in the State National Bank Building?

A. Yes sir.

Q. And when you were making the second assessment your office was in the State National Bank Building?

A. Yes, sir.

Q. Was the office of the Prairie Pipe Line Co. at that time on the same floor that your office was?

A. Just next door to the east.

Q. You were acquainted with Mr. Hillford, the then manager of the company?

A. Very well.

[fol. 64] Q. Did Mr. Hillford know that this assessment of benefits was being made the first time?

A. Yes, sir.

Q. Did he know that it was the second time?

A. I couldn't distinguish between the time, but Mr. Hillford joked with me a good deal about it, not only in the office but around different places over the country when I would be with him. He was familiar with it, I am sure of that.

Q. In arriving at the way you would assess these benefits which you have already detailed, what investigation, or state what attempts did the assessors make to find out and arrive at the right, equitable and just methods of distributing the assessment over the land, the city property and the public utilities of the district?

A. Well, you know Mr. Moore, ten years ago we were not as familiar with improvement districts as we are now and when this act was introduced and passed the legislature and the commissioners were appointed and the assessors, we went to work and got all the local information and help that we could, and then we wrote all over the country asking for the information, and we went into it as thoroughly as we knew how, and after we sifted it down and had the different meetings and reconciled the different contending factions we adopted this method which we thought was fair and equitable, and I still think was one of the fairest and most reasonable ways in arriving at a benefit from the building of an improvement of this kind.

Q. Then after this investigation you decided that a different method [out] to be used against the country acreage property, the city property and the public utilities that had miles of tram-road, telegraph or pipe lines running through the district?

A. Yes, sir.

Q. After the notice was published both the first and second time letting all parties know that they could appear before the assessors if they had any complaint to make, did any parties appear before the assessors and discuss the amount of assessment and the amount of benefits with the assessors?

A. The first time we were continuously adjusting this, I would say for thirty days or six weeks.

Q. That was the first assessment?

A. Yes, sir.

Q. When the second assessment was made about how long were you adjusting it, if you remember?

A. I don't recall.

Q. Are you sure that parties had notice and did come before you and adjustments were made?

A. The proper notice was given, although you can get the records on that, but as far as remembering anybody coming before us on the second assessment, I don't remember.

[fol. 65] Q. On the second, you were in session as required by law, so they could come before you?

A. Yes, sir.

Redirect examination:

Q. When were you in session to hear objections?
A. I do not recall where the notice was given.
Q. It was in your office then?
A. I was at the State National Bank Building.
Q. Did the other assessors meet with you any other day?
A. The assessors came whenever I sent for them.
Q. Were you there all the day on the date you set down for hearing objections?
A. I don't think we stayed there all the time. After there was no objection for thirty minutes or an hour, we talked about the order and adjourned.
Q. Do you know of any assessment in Arkansas against a pipe line for a road of $5,000.00 a mile?
A. At that time I don't think there was any assessment.
Q. Did you ever hear of any road?
A. No, I don't know.
Q. Do you know whether there is any assessment as high as that in Arkansas now?
A. No, I think the assessment is very reasonable.
Q. You said something about this $5,000.00 per mile being the assessment for general taxation of pipe lines?
A. I didn't say that. I said this: Five thousand Dollars a mile was made in the 1920 assessment under that statute.
Q. You didn't mean it was based on any assessment for general taxation?
A. No.

A. B. Little, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination:

By Mr. Arnold:

Q. What position did you occupy during 1915 and 1917, official position?
A. I assisted the Tax Collector in collecting the revenue of Miller County.
Q. I will ask you to state whether you wrote these two letters to M. E. Vantuyl?

A. Yes, sir, I wrote them.

Q. Did you ever receive a reply from Mr. Vantuyl?

[fol. 66] A. Well, the office did. The office received a reply.

Q. Have you a carbon of that reply that your office received from Mr. Vantuyl?

A. Well, that seems to be a carbon copy.

Q. I am talking about a carbon copy of the one he wrote you?

A. That is what I am talking about.

Q. Do you remember whether there was such a letter that came to you?

A. From this copy I remember there was such a letter came to the office.

Q. This carbon copy I hand you as coming from the files of the Prairie Pipe Line Company. Do you know where the original of that letter is?

A. No, sir, I don't.

Q. Could you say whether or not it is lost, the original letter he wrote to you?

A. I don't know; I presume it is lost or destroyed or mislaid.

Mr. Arnold: I want to introduce these letters in evidence.

Mr. Moore: I wish to object to the introduction simply on the ground that it is immaterial to the cause. They are letters from that company showing they are over due. I do not think that it has any bearing on the case, neither do I see that it will harm the case except by encumbering the record.

Mr. Arnold: It is for the purpose of showing their first knowledge of this road tax, show after this first assessment had been applied and the time for appearing had expired. We will prove by another witness,—Mr. Vantuyl is dead, and this is the correspondence that passed between him and Mr. Little. I expect I had better ask Mr. Little one other question.

Q. Were you acquainted with Mr. Vantuyl?

A. I had met him several times.

Q. You may state whether or not he came to your office shortly before this first letter was written?

A. He did.

Q. Did you give him a statement of his taxes?

A. Yes, sir.

Q. Did they include this road tax?

A. No.

Q. Then state whether or not you called his attention to the fact by one of these letters that this road tax was collectible, and notified him of the road tax?

A. I had in the first letter there.

Q. And that was the purpose of writing that letter?

A. Yes, sir.

[fol. 67] Q. Did you subsequently receive payment from him for that tax?

A. Yes.

Q. Was this property assessed on the [the] personal tax book of real estate tax book?

A. My recollection it was on the personal tax book. That is the reason I had overlooked this item.

Mr. Moore: It appears that the object of this testimony is to show that these parties did not have actual notice. It has already been shown that Mr. Hillford, the local manager of the Pipe Line Company, did have notice from Mr. Conway, the assessor, that here was a road built as shown by the testimony, and as will be shown by the map, also here is the Cotton Belt and Iron Mountain Railways: here is the pipe line and all the improvements, so it couldn't have been possible for it to have been built without everybody connected with the Pipe Line Company know it was built. But over and above that in the famous House case that has just been decided, the contention was there made that Mrs. House had no notice that these roads had ever been built. The Supreme Court of Arkansas held, and it was sustained by the decision of the United States Supreme Court, the tax in rem against the property and not against the person, and therefore the property was bound whether notice had actually been received by the owner or not. So under that decision, until they show that no notice was given,—in fact, it is proven that notice was given and that the pipe line did not object: that nothing whatever was done or heard of it until this day, it would not affect the decision.

Mr. Arnold: If Your Honor please, Mr. Moore is getting a little in advance of the real points in the case. It is in

anticipation. Now with reference to Mr. Hillford, of course, we will show, as Your Honor remembers we showed in the other cases, that this company had no local office here whatever in the county, and we will show that Mr. Hillford was only an operating superintendent of this pumping station; he had nothing to do with the tax operations of the company, or with the taxes. We will show that. Now with reference to this other feature about notice being given, but no notice actually received, we have a case here decided by Judge Sanborn. I presume it has never been reversed, I know of no reversal of it. It is the case of Thornton vs. Road Improvement District No. 1,231 Federal, 528.

The Court: As I understand that case, the decision of the latter court was based on the provision of the act which gave a certain period within which proceedings might be [fol. 68] instituted to test the legality of the assessment. The suit was brought after that period had expired. As a matter of fact, the Court of Appeals then passed upon the question as to whether under the circumstances that particular provision was of such a character as that it could be held that it did not constitute due process of law, so far as those people are concerned. Now that is the way I understand that case. Upon that question I think these letters may be received in evidence. They will, of course, be taken into consideration with the testimony that you have already brought out, Mr. Moore, with regard to the superintendent, as testified to by Mr. Conway, and perhaps, Mr. Josephs.

"Ex. C, JKP

A. J. Gurley, A. G. Sanderson, Sheriff and Collector, Miller County, Texarkana, Arkansas

April 5, 1917.

Mr. N. E. Van Tuyl, Independence, Kan.

Dear Sir: To beginning to make up formal receipt for the Prairie Pipe Line Company, I discovered that in addition to the highway tax charged on the land owned by the company of $14.98 there is charged a highway tax upon them as a corporation the sum of $395.20 and is charged in with the other taxes.

I cannot see why I failed to see this charge in rendering you statement, but such is the case, and will have to be paid before I can mark the book paid.

Perhaps you understand, this charge is made upon the late law passed by the Arkansas legislature in 1915 creating the Miller County highway district and the Commissioners taxed your company amount above stated for this year.

I will hold the check and other papers sent in until you take this matter up with the company, so send check for $395.20 and receipt will be forwarded at once.

Yours very truly, A. J. Gurley, Coll., by A. B. Little."

[fol. 69] "Ex. D, JKP

The Prairie Pipe Line Company

N. E. Van Tuyl, Tax Commissioner

Independence, Kansas, April 9, 191–.

A. J. Gurley, Esq., Sheriff and Tax Collector for Miller County, Texarkana, Arkansas.

Dear Sir: I am in receipt of your letter of April 5th with reference to an item of $495.20 additional highway tax on corporations.

I am sorry that we did not get this in the other statement but it can be paid yet all right as soon as you send me a statement of same in detail.

I wish you would receipt the other just as it was sent in and then send me a supplemental statement of the other. Please let me know on what it is based, that is, the assessed value upon which bases, and the rate per cent of the levy.

If you have a pamphlet copy of the 1915 law referred to, I should be pleased to have it so that I can use it in connection with my explanation to the officers of the company.

With kindest regards, I remain,

Yours very truly, N. E. Van Tuyl."

For Mr. A. B. Little.

"Ex. E, JKP

A. J. Gurley, Sheriff. J. P. Few, Chief Deputy

Office of Sheriff Miller County, Texarkana, Ark.

April 11th, 1917.

Mr. N. E. Van Tuyl, Independence, Kan.

DEAR SIR: In reply to yours of the 9th inst. beg to say this charge is upon the personal book and is extended there against the personal assessment of the company.
[fol. 70] The cause this was overlooked by me is because this kind of charge is out of the ordinary way as it stands alone in one charge of $395.20 against the corporation as a highway tax. I do not know how the Commissioners figured it out, but they claim this is due by your company as a corporation, and the book can not be marked paid with this charge in it, as it is extended on one line.

I will therefore hold the other receipts and the check until you have time to have the company investigate it. I do not have a copy of the law, and could not find one for you around the court house.

There will be no penalty to the company by not paying this before now, so when you have investigated the matter out, send check for $395.20 and all receipts will be forwarded promptly.

Yours very truly, A. B. Little, D. C."

Q. I will ask you to state whether this is a statement that you had furnished of these taxes previous to this correspondence?

A. No that is not it.

Q. Is this the receipt that Mr. Gurley gave for the taxes, or for the corrected amount?

A. Yes, this is a receipt for the amount complained of in the first letter, $395.20, that we did not get in the former statement.

Q. Is that this highway bridge tax?

A. Yes.

Mr. Arnold: We ask the same privilege with that, Your Honor?

The Court: It will be received.

"Ex. F, JKP

P. P. L. Co. 1M-11-15. N. E. Van Tuyl, Tax Agt.

Approved. —— ——, Treasurer. —— ——, President.
Extension and footings correct. A. L. Strain.
Analyzed by E. F. Henry.
Approved. L. L. Dudley.

[fol. 71] The Prairie Pipe Line Company, Independence, Kansas

April 26, 1917. D85.

To A. J. Gurley, Sheriff & Tax Collector, Texarkana, Arkansas, Dr.

In his official capacity as Tax Collector in and for the County of Miller, State of Ark. who hereby officially acknowledges receipt of the several amounts of taxes mentioned herein, from the Prairie Pipe Line Company, Independence, Kansas, in full payment of the following state, county, township, school and other taxes levied and assessed against the following real and personal property of said company due for the year, of 1916, to-wit:

Items of property, rate	Assessed valuation	Tax	Total
Special Benefit Taxes in Miller County Highway Improvement district under Chap. 153 Laws of Arkansas 1915			
Property benefited belonging to The Prairie Pipe Line Co. assessed by Commissioners at	59340		
Total Tax will be 10% of said amount or for which 15 year bonds are issued by said Highway Road Improvement District	5934.00	5934.00	
1/15	5934.00		$395.20
Tax Reserve Acct. Ark. T. L. Advalorem		395.20	Audited

Please date and sign this receipt and return promptly with all papers attached. Signatures should be in ink.

Indexed. S. J. Slattery.

Received 4/10/1927, $359.20, in full for above account. A. J. Gurley, by —— ——.

6805. On reverse: Sub. No. 3, Voucher No. D 85. The Prairie Pipe Line Company. Apr., 1917."

[fol. 72] Q. Mr. Little, how long have you lived in Miller County?

A. Fifty-four years.

Q. What official positions have you held in the county?

A. Well, numerous ones. I was county assessor in 1884. I was County Clerk from 1902 to 1910, and I have been Deputy Tax Collector three or four times, I don't know how many more. I don't believe I was ever road overseer.

Q. Mr. Little, are you familiar with the boundaries in a general way of Miller County Highway & Bridge District?

A. Well, in a general way I am.

Q. Do you understand that that embraces the city of Texarkana and vicinity?

A. Yes.

Q. And also to the north and east to the Red River?

A. Yes.

Q. Are you familiar with the lands in the district?

A. Well, fairly so.

Q. I will ask you to state whether or not the district is thickly settled farming country?

A. Yes, near Texarkana, of course, it is a little more thickly settled than further east or on down to the bottoms. It is fairly well settled with farms throughout.

Q. I will ask you to state what roughly in your opinion is the proportion of inhabitants living in the district of Miller County, the proportion living in the Miller County, the proportion living in the Miller County Highway and Bridge District?

A. That district comprises practically the north half of Texarkana,—well, there is a larger population in the north half than in the south half.

Q. More than half the population in the county?

A. Yes sir.

Q. This is an agriculture country?

A. Yes, sir.

Q. That is the main source of livelihood of the people in the north half of the county?

A. Yes, sir.

Cross-examination.

By Mr. Moore:

Q. You don't mean the City of Texarkana is agricultural?

A. No, he said outside of the city of Texarkana.

W. B. Fulton, a witness sworn on behalf of the Prairie Pipe Line Co., plaintiff, testified as follows:

Direct examination.

By Mr. Arnold:

Q. What is your occupation?

A. Chief Engineer of the Standard Pipe Line Company, Incorporated.

[fol. 73] Q. How long have you served in that capacity?

A. Every since the organization of the pipe line.

Q. What experience have you had?

A. Eight years with the Standard Oil Co. of Louisiana and the Standard Pipe Line Co.

Q. Are you familiar with the location of the pipe line in Miller County Highway & Bridge District?

A. Yes sir.

Q. Have you a map showing that?

A. Yes sir.

Q. Is that the map?

A. Yes, sir.

Q. Does it show all the roads that are constructed, or not?

A. No; there was one road that is missing.

Q. Show where it started from?

A. Toward Texarkana on the main Fulton highway for the Little River highway about a mile towards Texarkana, and then it turns west.

Q. Over through here?

A. Yes, sir; I don't know where it goes over there but I know where it breaks off about here (indicating).

Q. Now then the dark line indicates the line of the pipe?

A. Yes, sir; heavy blue line. There is a fork in the pipe line, section 14-16-28.

Q. And these forks come about a mile apart?

A. Yes, sir; at the time this map was made.

Q. What was the number of miles of pipe line in that district as of July 4, 1920?

A. There were 25.49 miles.

Q. Have you all the acreage in that district?

A. No, we don't get that from the record.

Q. You can't figure that up in just a few minutes?

A. I would have to make a rough estimate from the map.

Q. Mr. Fulton, where did you get the location of these roads?

A. From the description, I believe they are, furnished in the acts of the legislature.

Q. Does the act say that the Commissioners just got the right to build 60 miles of improved highway?

A. I think so.

Q. Then from your investigation of the records of the Highway Department and the records here, these roads here are the ones that were built?

A. Well, the Highway Department did not even know there was a road being built in Miller County, Arkansas, and the records on file at the County Court house is where I got these roads.

Q. Then you had as of July 4, 1922, 25.49 miles pipe line within the district?

A. Yes, sir.

[fol. 74] Q. As to telegraph and telephone lines, I wish you would describe what property the company had at that time?

A. The telegraph and telephone lines came down,—all we had when we took over the lines from the Telephone Company was the wires, the wires came down over the Southwestern Bell Telephone Company's poles.

Q. You owned none of the poles?

A. No, we leased the right from the Telephone Company to string all wires on their poles.

Q. I wish you would explain how the pipe lines are constructed?

A. The pipe is generally bought from the mills and delivered at our unloading points, which is generally sidings along the railroad, they are unloaded and stacked.

Q. What materials are the pipe lines made of?

A. Rolled steel.

Q. Are they buried beneath the surface of the earth?

A. They are.

Q. To what depth?

A. We generally put them 18 or 20 inches.

Q. How is the inspection of the pipe lines made?

A. The inspection of the pipe lines are made by an employee called the line walker, he has a section that he covers and makes the round trip approximately once a week. He carries his own tools with him for repairing and he walks the entire line. He never digs up the line but he notices from the condition of the soil whether there is any leaks.

Q. Will the construction of that road increase the pipe line value?

A. Not a bit.

Q. Will it increase the volume of the pipe line giving any greater capacity?

A. Not a bit.

Q. I will ask you if the value of that pipe line has been enhanced in any sum whatever by reason of the construction of these roads?

A. Not at all.

Q. When did the Standard Pipe Line Co. acquire this property?

A. December, 1922.

Q. How many times has it been necessary to make any repairs on the line since that time, in that district?

A. There has been no major repairs.

Q. Explain major repairs?

A. Well, the line is constructed of joints of the average length of 21 feet, and are connected up with what pipe line men term collars and they are screwed into these collars. These collars occasionally will leak. The line walker has his caulking tools along and caulks these points.

[fol. 75] Q. Do any of these, roads in this district parallel the pipe line of the company?

A. None at all.

Q. Has the expense of upkeep been any less now than it was before the roads were built?

A. No sir.

Q. Does the company receive any products for transportation through Arkansas?

A. Not through this district.

Q. Or within this line of pipe leading from the Oklahoma line down through Louisiana?

A. No, sir.

Q. Does it sell any products at all in Arkansas?

A. We have no commodities for sale except transportation.

Q. Strictly a carrier for hire?

A. Yes, sir.

Cross-examination.

By Mr. Moore:

Q. You know, do you not, that you have left off several matters on that map in making it up?

A. No, I don't know of any roads except one, that has been left off that map from the description furnished from the acts of the legislature.

Q. I am not speaking anything from the acts of the legislature but from the roads that are now built?

A. There is probably several roads in the county not on that map.

Q. Do you know that a road goes directly north on what is the State line?

A. Yes, sir.

Q. You have driven over that road?

A. Yes sir.

Q. It is a hard surface gravel road?

A. Yes sir. That road shows on that map.

Q. I will ask you if you are not mistaken in saying so?

A. Does not show on that map.

Q. Then you are mistaken in saying that?

A. Yes.

Q. Isn't there a road that goes from Mandeville, shortly south of Mandeville out east, up about Dooley's Ferry?

A. I don't know where it goes to, but I know it leaves about a mile south of Mandeville.

Q. Isn't there a road known as the Sanderson lane?

A. I don't know it.

Q. Did you get a road that branches to the left about three miles out between here and the pumping plant?

A. Yes.

Q. That road is not shown on this map?

A. No.

Q. Do you know there is a road that goes out over College Hill and goes almost directly east, the Genoa road?

A. Yes.

[fol. 76] Q. That is not shown on this map?

A. No.

Q. Then you have left off those four roads?

A. Yes.

Q. After putting on the road going towards Dooley's Ferry, how many places will the roads in the District cross the pipe lines?

A. Four.

Q. And in addition to crossing it, I will ask you if that road that goes out of the east does not come within a half mile of the pipe line on the Genoa Road?

A. That road is not in the District.

Q. That is the boundary of the district, if you are not acquainted with the boundaries.

A. Yes, I am acquainted with the boundaries, but not acquainted with this map. What was that question?

Q. Whether the road from Texarkana going almost due east does not reach a point within about one-half mile of the pipe line?

A. Yes.

Q. How many miles of right of way approximately, are there of the pipe line inside the district? I am not speaking of miles of pipe, but miles of right of way?

A. We have no right of way.

Q. I am not going into a legal question with you. The lawyers will settle that. On land, for about how many miles inside the district have you laid lines of pipe?

A. There is a difference between the two lines. It is approximately twelve and a half miles each.

Q. Now how many miles of pipe are laid on that 12.5 miles of right of way?

A. At what time?

Q. At the present time, now?

A. 51.25 miles.

Q. How many miles have been laid on that right of way within the district during the years 1916 and 1917?

A. I haven't any authority on that at all.

Q. You were not here then?

A. No.

Q. When did you come here?

A. 1918. I wasn't connected with the Prairie Pipe Line Co. at that time.

Q. Could you say how many miles of telephone line on that right of way now?

A. There is approximately 12.5 miles at this time.

Q. One line of that?

A. Yes.

Q. During the year 1920, how many miles of pipe were laid on that right of way?

A. Approximately 25.49.

Q. How many pipe — did you have on the right of way during the year 1920?

A. Two.

Q. And you have four lines now?

A. Yes.

Q. What size pipe?

A. Eight inch.

[fol. 77] Q. What year was the telephone line built on the right of way?

A. I think it was 1923.

Q. There had been a telephone line prior to that time?

A. I have no knowledge of that at all.

Q. It was there before your time, if it was there?

A. It was there before my time, yes.

Q. During what year was the second line of pipe laid on that right of way?

A. I have no knowledge of that. That was Prairie Pipe Line Company work.

Q. When you came here there were two lines of pipe were there?

A. Yes.

Q. Which is the line of pipe, where was the line of pipe that was taken up going north towards the river?

A. When.

Q. At any time?

A. In my knowledge there has been two lines taken up.

Q. What year was the first line taken up?

A. I don't know; that was done by the Prairie Company.

Q. You state it was in your knowledge?

A. It is hearsay when it was taken.

Q. How many miles have been taken up since you were with the company?

A. One.

Q. Where did that line run?

A. The one farthest east.

Q. This line here (indicating) is not in existence now?

A. Not in existence now.

Q. All the pipe are on the same right of way now?

A. That is correct.

Q. What was done with the pipe that were taken up from that line?

A. Probably stacked some place for future use, sorted over and culled.

Q. Where were they hauled to be stacked?

A. I really don't know.

Q. What time was it that line was taken up?

A. That was done this spring or last fall and winter, 1924 and 1925.

Q. Did you during the year 1923 build an extension to that line?

A. We did.

Q. How many miles of extension did you build? First, did you in 1921 build an extension?

A. We didn't have a line in 1921.

Q. You said you were here at that time, I believe?

A. Yes.

Q. Do you know whether the Prairie Pipe Line Company built an extension in 1921?

A. No.

[fol. 78] Q. You don't know?

A. No.

Q. In 1923 did you put in two additional lines of pipe thru the entire district?

A. Yes, sir.

Q. What method did you pursue in building that line in 1923 for getting your material on the ground?

Mr. Arnold: I don't think it pertinent. It relates to a pipe line that is in. It is going into matters that have no business before the court.

Mr. Moore: Your Honor, I think that we have ample authority.

The Court: It may go on.

A. We unloaded our pipe at the railroad side track and hauled it out and strung it along the right of way.

Q. At what sidings did you unload that pipe?

A. The pipe was unloaded at Paup Spur, Texarkana and Genoa.

Q. Now take the pipe that was unloaded at Paup Spur, what method of transportation did you use?

A. We used trucks and teams.

Q. Did you haul with those trucks over these improved gravel roads?

A. We did.

Q. What size trucks did you use, Fords or large trucks?

A. Large trucks.

Q. Did those trucks after reaching the distributing point, unload that pipe by the side of the gravel road?

A. No sir: some times they took it right into the pipe line right of way.

Q. Where the pipe line right of way was a mile or more distant from the road, did you not customarily unload the pipe from trucks on the side of the gravel road and then haul that pipe down the right of way with teams?

A. No, customarily we do not do that, because the cost of rehandling is more than we can save hauling by truck.

Q. Did you not in this particular instance, unload that pipe along the side of the gravel road and then hire teams to haul it?

A. I do not believe we did.

Q. Would you swear that you did not?

A. The best of my knowledge we did not.

Q. Did you not employ a contractor with teams who hauled that pipe with wagons and teams?

A. That is beyond my knowledge. I know of no contract whatever.

Q. You would not say you did not do that?

[fol. 79] A. No, I would not say we did not do it.

Q. Do you not know that the dirt roads were in such condition that you could not haul out the heavy loads of pipe over them?

A. We never at any time could haul as much over the dirt road as we could over the gravel road.

Q. Then you admit you could not haul as much as you could over the gravel roads with trucks?

A. Yes, I admit that.

Q. First, how many men did you use in laying that pipe line?

A. I have no knowledge of that.

Q. How many months were you engaged in laying that pipe line?

A. Altogether probably six months.

Q. You had full charge of the construction, did you not?

A. No, sir.

Q. What was your business or employment?

A. My business was Chief Engineer, designing, surveying and cost accounting, to some extent, and making up estimates and designs.

Q. Have you as an engineer ever had occasion to do considerable hauling of any kind in your work?

A. Yes, sir.

Q. I will ask you whether you can haul cheaper and quicker over a hard surfaced road than you can over the ordinary dirt road throughout the country?

A. Surely.

Q. If you have large quantities of material to deliver, is it an advantage to have a hard surface road over which that material can be delivered?

A. If it gives the road and covers the territory you want to haul it.

Q. I will ask you if within the area of the Miller County Highway and Bridge District an improved road does not reach within two miles of every part of the pipe line within that district?

A. It does.

Q. What would be the greatest distance from Mandeville, or from Paup Spur, or Texarkana to any part of that pipe line?

A. You mean over the improved road?

Q. No; by any line, air line?

A. The greatest distance presumably 13 or 14 miles from Texarkana, that is, within that district.

Q. Then would you say from your knowledge of engineering that in building this pipe line when you can get in close cases to almost every part of it over a hard surface road, that there was no benefit received from this road?

[fol. 80] A. Yes, sir; for the plain reason as an engineer there is no point on that road on any one of these hard surface roads but what is just as accessible from Mandeville station or Genoa. We have got that gravel road to haul extra.

Q. You have not answered my question.

A. I answered the question I think. There is no benefit received from the hard roads.

Q. You admitted that this pipe was hauled over this hard surface road to be delivered along the right of way of the pipe line?

A. Yes, sir, partly over the gravel road.

Q. If there was no benefit obtained from hauling over said roads, why did you not haul along the right of way instead of using the roads?

A. At the time we were building these pipe lines we were also constructing, extending and adding on to a station at Mandeville. We have only one small unloading spur, it holds approximately five cars ordinarily. If there were no construction going *and* and the spur was available for unloading pipe at Mandeville, all of that pipe would have been unloaded at Genoa and Mandeville and distributed practically on the pipe line, regardless of the hard surface roads, but while the construction of the pipe line was going on we were unloading and storing on that five car spur a total of 129 car loads of material including sand, gravel and other things. And besides that the spur track is on the wrong side of the [wrong side of the] railroad and there is a double track railroad and single track siding anyway we could not unload the pipe there. Therefore, we had to go to Paup Spur and Texarkana. We did not do that by choice because [there] were the only unloading points available.

Q. Have you been over the pipe line?

A. Yes, sir.

Q. As you go in a northerly direction from Mandeville, what is the character of the country following the pipe line as to being level or broken for the first three or four miles?

A. Well, it is a little broken, not much.

Q. Are there not a number of drains and trenches that go through there making hills and holes?

A. Yes; it is not a rough country though.

Q. Would it have been possible to have taken heavy trucks such as you use, to have gone over that right of way from Mandeville north with loads of pipe?

A. We do not go over those anyway with heavy trucks most of the way.

Q. You used those trucks for hauling on hard surface roads?

A. We do haul over country roads also.

[fol. 81] Q. You bogged down?

A. Yes, we bogged down. Lots of times we go through bridges. That has occurred when we [we] were on the highway, and we built a better bridge than they had in there.

Q. How many men did you use in building that during the six months?

A. About sixty men altogether.

Q. Where did these men come from principally?

A. All over the United States.

Q. I am speaking of where did they come from that morning, and where did they go to each evening?

A. From the camps.

Q. Where were those camps?

A. I don't really know where those camps were situated; along that right of way.

Q. Is it not a fact that most of those men came from the City of Texarkana?

A. I don't know where they came from.

Q. Were you in charge of that work?

A. No, sir.

Q. I thought you said you knew something about it?

A. I do.

Q. Who was the man in charge of it?

A. Directly in charge?

Q. Yes, sir.

A. One of our District foreman.

Q. Where were you living when that work went on?

A. Shreveport.

Q. You were not up here except occasionally?

A. Occasionally.

Q. Then of your own knowledge you don't know where these men came from?

A. Yes.

Q. Of your own knowledge you don't know how these pipe were hauled out over the line?

A. I don't know when every joint of pipe.

Q. How many times were you on this job while the work was going on?

A. I would say ten or twelve or fifteen times.

Q. How would you do when you came in to go on it?

A. What do you mean?

Q. Would you stay here a day and night, or come in in the morning and go back to Shreveport that night?

A. Probably stay here a day or two depending on what I had to do.

Q. How would you go from here to the job?

A. I generally drove up from Shreveport in a car.

[fol. 82] Q. You drove out on the job, you took your automobile?

A. Yes some times I walked.

Q. Did you ever walk from Texarkana all the way out?

A. No.

Q. You were mistaken when you said some times you walked?

A. I said some times.

Q. You mean you walked after you were on the pipe line?

A. Yes, and I walked from where I was at the time. Some times I did not stop at Texarkana.

Q. But in going to Mandeville, or to the pipe line, you used an automobile?

A. Yes.

Q. You drove over these roads to get there?

A. As a private citizen I drove over it.

Q. Did not the workmen go out in automobiles and in truck loads?

A. Some of them drove their own private cars. Yes, we have driven cars out there, paying 4 cents a gallon gasoline tax.

Q. Didn't the company have regular trucks that came to Texarkana, loading them with as many men as they would carry?

A. Yes.

Q. Take them to work and bring them back?

A. Yes.

Q. By doing that were they not benefited?

A. No. I think the workmen themselves were benefited by that. It was an added cost to us.

Q. I am asking you not for your opinion but for the facts.

A. No, I don't think the company benefited particularly by that.

Q. I asked you did you not have trucks that carried these men out in the morning and picked them up and brought them in at night?

A. Yes, sir.

Q. How far is the pumping station and the offices of the company at Mandeville from the public road that goes from here to Fulton?

A. Maybe a hundred yards or so; just off the public road.

Q. Would it be possible for any person connected with the company, whether workman, superintendent or general manager, to live at Mandeville and not know that this road was being built?

A. I do not think it would unless they were blind, or something.

Q. Then you think that the persons connected with the company living out there must have known that this road was being built?

[fol. 83] A. Yes, they probably knew the road was being built.

Q. Now you can't state, do you, that it was or was not any advantage to have these hard surface roads over which this 140 odd cars of material could be hauled? How many cars did you unload at Mandeville?

A. 129.

Q. How many did you unload at Paup Spur?

A. There were 21 cars.

Q. How many did you unload at Texarkana?

A. Seven cars.

Q. And that pipe and material was used in putting this second line through along the original right of way?

A. Only the 21 cars at Paup and the seven cars at Texarkana.

Q. Where were the cars unloaded at Mandeville used?

A. In the building of the station, cement, sand, gravel, valves and fittings and all building material.

Q. Did you not unload any pipe at Mandeville?

A. We unloaded eight cars.

Q. That was used in building the pipe line?

A. Some of it, yes; some of it was used in the station.

Q. Now all of this was done during the year 1923?

A. Yes, it ran a little over into 1924.

Q. Did you build the telephone line during that same period?

A. No.

Q. When was that telephone line built?

A. I think that was early in 1923, although I did not have charge of the electrical end of it.

Q. Where was the material for that telephone line shipped in?

A. I don't know. I am not connected with the telegraph and telephone department.

Q. Do you know whether pipe was hauled from Paup Spur across the bridge first over these roads, and then over into the Little River County?

A. To my knowledge, there has been no pipe hauled across Index Bridge from Paup Spur. All our unloading for across the other side of the river came from Ogden.

Q. Do you not know that pipe was hauled regardless of the purpose, from Paup Spur across the river at Index?

A. No, I do not.

Q. You do not say it was not?

A. No, I don't say it was not. I do not think it was.

Q. Do you not know that trucks loaded with men went from here over this road by Paup Spur to Index across the bridge to work in Little River County?

A. No, I don't know.

[fol. 84] Q. Do you not know that trucks with laborers came from Little River County, came across the bridge to work in this county?

A. I don't know that.

Redirect examination.

By Mr. Arnold:

Q. Whose trucks were those doing that hauling?
A. If they were doing it, they were our trucks.
Q. Did you pay an Arkansas license?
A. Yes.
Q. Are they big trucks?
A. Yes. I don't know what the license cost is.
Q. Did the hauling of this pipe benefit the pipe that was in there in the ground?
A. No.
Q. If it did anything, you didn't have to pay as much to construct the new line?
A. I would not say these roads helped us.
Q. If it did help?
A. No, it would not help the old line at all.
Q. Well, therefore, what is your opinion about whether or not it decreased the value of the old line?
A. Well, from a construction of a pipe line, I can't see that there is any difference in the value of it if a good road would parallel our pipe line so that we would not cross any other country at all. Just to parallel it, it might decrease the actual construction of that pipe line from fifty to a hundred dollars per mile.
Q. How could it benefit the pipe line?
A. It don't benefit the pipe line.
Q. It is not a pipe line until you get it in the ground?
A. No.
Q. If you wanted to construct new line somewhere you would not have to spend as much money to get it in the ground?
A. If we construct a line anywhere we pay no attention to good roads, the shortest distance between the points.

Cross-examination.

By Mr. Moore:

Q. Do you think a good road is any benefit to a country?
A. Yes, if I had a farm I would like to have a good road close to it.
Q. If you had a home would you want it?
A. Not too close.

Q. If you had a business would it be?

A. Well, personally to me it would be, but to my position I do not think it would.

[fol. 85] Q. Then it is no advantage to the farm, it is just an advantage to the man that lives on it, or goes to it?

A. No, I don't express that idea. If a road would come close to a farm I owned and a man wanted to buy it, the fact that that road went by it would admittedly raise that land almost double.

Q. And if a road went to a pipe line, that you had to go to very often, wouldn't it be worth more?

A. I don't know of any roads around here that does that.

Q. These roads do cross the pipe line at the places shown on this map?

A. Yes.

Redirect examination.

By Mr. Arnold:

Q. Isn't the main advantage to a farm the advantage that a farmer receives from being able to haul his products over the road to market?

A. Yes, from an ordinary standpoint, I think it would.

Q. You don't haul any of your products to the market, do you?

A. No, sir, not over highway.

Mr. Arnold: I have a blank form of right-of-way to the plaintiff pipe line company. Upon agreement with Mr. Moore this may be introduced as showing the rights of the plaintiff in the construction of this line through this territory.

Mr. Moore: I have no objection to the introduction of it. I will agree that the other one that is already in the case may be copied into the record.

Said right of way deed being in words and figures as follows:

"Right of Way"

For and in consideration of the sum of six hundred dollars we the undersigned hereby grant to The Prairie Pipe Line Company organized and existing under the laws of the State of Kansas, its successors or assigns, the right of way

to lay, maintain, operate and remove pipe lines for the transportation of oil or gas, together with the right of ingress and egress, on, over and through the following described lands situated in Miller County, Arkansas, to-wit: The East one half of the North west section Eight-fourteen S.—28 W.; the East Half of Section 8 and South Half of Section 9, Township 14, S. R. 28 W., and my land between the levee and the Red River north of Section 8 in Section 5-14-28.

The said undersigned owners, their heirs or assigns to fully use and enjoy the said premises except as the same [fol. 86] may be necessary for the purposes herein granted to the said The Prairie Pipe Line Company, its successors or assigns.

The said The Prairie Pipe Line Company, its successors or assigns, hereby agrees to pay *to* any damages which may arise from the laying, maintaining, operation or removing said pipe line; said damage if not mutually agreed upon, to be ascertained and determined by three disinterested persons, one thereof to be appointed by the owners of said land, their heirs or assigns, one by The Prairie Pipe Line Company, its successors or assigns, and a third by the two so appointed as aforesaid, and the award of such three persons shall be final and conclusive.

It is further understood and agreed, that the said The Prairie Pipe Line Company, its successsors or assigns, may at any time lay an additional line or lines of pipe along side of the first line, as herein provided, upon the payment of a like consideration for each additional line when laid, and subject to the same rights and conditions. Said company, its successors and assigns to have the right to change the size of its pipes, the damages, if any, in making such change to be paid by the said The Prairie Pipe Line Company, its successors or assigns.

Also the right to erect a tower on our land for telegraph or telephone service between the Levee and Red River on Section 5 or 8-14-28. Pipe line to be built along present survey, county roads to be followed where practicable in stringing pipe.

In witness whereof, we have hereunto set our hands and seals this 10th day of March, 1915.

(Signed) Tom Hinton, Mina A. Hinton."

R. A. McGrew, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Arnold:

Q. What occupation have you?
A. Vice President, Standard Pipe Line Company.
Q. How long have you been such?
A. Since the organization of the company.
Q. Mr. McGrew, when did Standard Pipe Line Company purchase the pipe lines of the Prairie Pipe Line Co. in Arkansas?
[fol. 87] A. In December, 1922.
Q. At that time how many lines of pipe were there through this district?
A. Two lines of eight inch pipe.
Q. Did you at a later time lay additional lines of pipe?
A. We have.
Q. Did you have the right from the various owners to construct that line of pipe?
A. We did.
Q. How did you get that right?
A. By purchase.
Q. At the time you were laying it?
A. Prior to the time we would construct the line we negotiated for additional right of way.
Q. For what consideration?
A. For the same consideration on former occasions.
Q. Then when you constructed these additional lines you had to buy right of way for constructing them?
A. We did.
Q. And pay the consideration that you paid for the privilege that you first paid?
A. We did.
Q. Are you familiar with the lines of road and boundaries of the different roads districts?
A. I am in a general way.
Q. Has the construction of these roads enhanced the value of this pipe line?

A. I would not so consider it.

Q. In your own way give the basis of your opinion?

A. The improved highways in this territory under construction are constructed mostly running at a right angles with the pipe line. In a general way there are no roads that you might consider as paralleling our pipe lines. It might be said that when a road parallels our pipe line right of way for a limited distance at a remote point, remote from the pipe line, in the matter of pipe line construction consideration to roads is never given. In other words, if I was called upon to project a pipe line from one point to another, it is usual, generally we put a straight rule on the map and let it fall where it may, and that is the point at which we construct the line notwithstanding any connection with good roads. Anything that I might consider an extra hazard might be a slight change in aligning, but the shortest distance that a pipe line can be constructed between one point and another, is the original point to put the pipe line. That is true for two different reasons. It shortens your line of transportation thereby increasing your volume giving you the largest volume that can be transported through the line from one point to another and it lessens [fol. 88] the cost, and I say that for that reason that such matters as improved highways is not considered in the projection,— in the engineering work of the projection of a pipe line. Now we have a definite thing to do in the construction of a pipe line, the construction of which all takes place right on the right of way where the pipe line is to lay, and we have occasion at all times during the construction to move materials, men and other things up and down the right of way, and consideration is always given to the bridging of small ravines and the making the right of way passable, and our transportation is carried on over the right of way chiefly speaking. For that reason I do not think the highways as existing in this district that have been in no way designed to take advantage,—or to give advantage to the pipe line from the standpoint of transportation of materials, are of any benefit to us. And, taking another view of it, if we were to dispose of this pipe line to someone, the fact that these highways existed would not have any bearing on the value of the line to anyone else that should take the line to operate it. There is nothing that comes to

this pipe line over this road that goes as traffic; it is not in any way analogous to the railroad. Good roads might be construed in connection with the railroads as feeders to the railroad and thereby act as a factor in increasing the revenue of the road. That is not true in connection with the pipe line. By no stretch of the imagination can I figure that the improvement of roads in this district has been of any benefit to us. There were roads existing before these roads were improved that would answer the limited purposes for which we now use the roads. That is looking at it strictly from a pipe line view point. I have different ideas from a personal view point as to the necessity of good roads.

Q. Were the lines that you bought from the Prairie Pipe Line Co. constructed before these roads were constructed?

A. I don't know when the roads were first constructed. I believe, however, that the first line in 1919 was built some little time before any good roads were projected in this territory.

Q. The pipe lines were laid before 1917?

A. I mean 1909, the first line was laid.

Q. The second line was laid when?

A. I don't know when the Prairie laid their second line. I think in 1915.

Q. Mr. McGrew, has your company ever paid any taxes to this district on the pipe line or telegraph or telephone line?

A. Well——

[fol. 89] Q. Has it, or has it not paid the assessments to this district on its real estate out here at the Manderville station?

A. I cannot definitely state just what taxes our company has paid. I am most satisfied that all taxes that have accrued that were considered legal were paid. I do not personally handle that matter and I can't personally recall just what taxes were paid. I am most certain that all general tax has been paid.

Q. I am asking you about assessments sued for in this case like the one involved in this case?

A. No, I think not.

Q. You don't know what your predecessor has done?

A. No, sir.

Q. Has the assessment of the benefits against this property made in July 1920, did you at that time have the right to lay these additional lines in this territory?

A. That was before my jurisdiction in 1920.

Q. You didn't have the right then, because you bought the line after that. How many men were employed by your company ordinarily to keep the line in condition?

A. You mean from an operating point of view?

Q. Yes, sir.

A. It is a general practice of the pipe line operation to have what is called a line walker.

Q. For how many miles?

A. Those line walkers are usually called upon to patrol approximately forty miles. That forty miles is usually covered twice a week, that is, there is a round trip made within the week, making the patrol each week within the week for a given section. That is good practice. The purpose of this patrol is to detect small leaks.

Q. How many automobiles have you in use?

A. We have one automobile located in this district.

Q. Mr. McGrew, were you asked the question as to what opportunities you have had with reference to acquiring knowledge as an engineer, special knowledge as civil engineer?

A. I am not a civil engineer. As to practial pipe line construction, I have had 25 years experience, or thereabouts.

Q. That is, practical experience?

A. Yes, sir.

Q. Have you occupied any position with reference to employment as an engineer, or in charge of any part of the pipe line at any time?

A. I have.

Q. Are you a member of any society of mechanical engineers?

[fol. 90] A. I am a member of the A. S. M. E. I am associate member of American Society Mechanical Engineers.

Q. What has been your experience, what practical experience have you had with reference to pipe lines, building, laying or controlling pipe lines?

A. At some time during my career in pipe line work I have occupied every position that is available on the pipe

lines, with possibly one or two exceptions, such as stenographer or clerk. I have never occupied those positions. Every other occupation almost in the pipe line business I have some time or other worked in the capacity of such occupation. I have been common laborer, foreman of construction gangs, charge of commissary work, engineer on pumping stations, district manager, chief clerk in the office, in charge of the right-of-way work, and most every occupation connected with the pipe lines.

Q. Are you familiar with right-of-way where the pipe line is now laid that belongs to the Standard Pipe Line Company Incorporated?

A. Only generally speaking.

Q. Do you know where this pipe line enters Arkansas and where it goes out?

A. Yes, sir.

Q. At what point does it come in?

A. It enters Arkansas about 12:38 northwest from De Queen.

Q. Running in what direction?

A. Running southeast and northwest.

Q. To what point?

A. From a point on the Oklahoma-Arkansas State line to a point on the Arkansas-Louisiana State line near Ida, and then going on south from there to Baton Rouge.

Q. Is this company engaged in any other business than that of transporting oil from the neighboring state of Oklahoma?

A. No, sir.

Q. From some point in Oklahoma to some point in Louisiana?

A. No, sir.

Q. Has it any local business of any kind in the State of Arkansas?

A. No, sir.

Q. What is the life of a pipe line that put down in such territory?

A. It is generally conceded that the life of a pipe line is approximately 20 years. That will not hold good in some sections.

Q. Is that [any] average estimate?

[fol. 91] A. That is an average estimate that I think would be well to consider correct. We have some territories where the life of a pipe line will not exceed six years.

Q. What is the reasonable market value of a pipe line estimated by the prices of 1920?

A. The market value?

Q. The cost of its construction?

A. You mean the re-placement cost?

Q. Yes?

A. Well, for 1920, and since that time a re-placement cost of 8 inch pipe lines in 1920 in this territory is $11,500.00.

Q. Do you know what the re-placement was in 1919, construction price?

A. No, I couldn't say as to that.

Q. In 1915 do you know what it was then?

A. In 1915 my recollection of that would be between eight and nine thousand dollars per mile.

Q. Could you say that it was less than that in 1909?

A. It would be my judgment that it was considerably less, but I would not say just what that figure would be.

Q. Your company, or that is, Standard Pipe Line Company Incorporated of Louisiana, bought the Prairie Pipe Line Company's lines, I believe it has been stated, about December 1, 1922. Is that correct?

A. That is correct.

Q. There were two parallel lines at that time?

A. That is true.

Q. One of them you state, I believe was laid about 1909?

A. That is my recollection.

Q. And the other about 1915?

A. Yes sir. I make those statements based on the fact that the Standard Oil Company's pipe line in Louisiana were being constructed the first in 1909, and the first line in Arkansas was being constructed concurrently. We made an increase in our pipe line in 1915 in Louisiana and it is my understanding that the Prairie Pipe Line Company increased their facilities here. That is the only knowledge I have of the time these lines were constructed.

Q. Now with reference to the life of one of these pipe lines, do you figure an annual depreciation of any percentage?

A. Yes.

Q. What is that depreciation?

A. I think there is an annual depreciation of 5% each year.

Q. The lines that were put down in 1909 and 1915 were not worth as much in 1920 as they were when put down?

A. No, sir.

[fol. 92] Q. I want to know what the value of those two lines were per mile in the year 1920, what was their value, considering the depreciation?

A. Well, there would be the difference in construction cost less depreciation.

Q. They would be worth less at that time than they were when they were new?

A. Yes, sir.

Q. In other words the pipe lines will depreciate 5% a year?

A. Yes, sir.

Q. Have you kept in touch with the repairs that were necessary on this pipe line that was bought from Prairie Pipe Line Company?

A. I have in a general way, yes, sir.

Q. State to the Court what repairs have been necessary, if any, on the line in this district that you have purchased from the Prairie Pipe Line Company, what repairs have been necessary since that purchase?

A. There has been no major repairs necessary on the pipe lines in this district, with the exception of—to the best of my recollection, with the exception of the removal of a piece of line near the river. A part of that line was taken up and placed on the new righ-of-way and in the changing of the lines from one point on the river to the other, there was certain pipes that was badly depreciated, removed and renewals put in at the time the re-alignment was made. In other words, the changes were not done on account of bad conditions, that is bad conditions alone did not cause us to make this change, but in order to meet our condition at the river we re-aligned our pipes and at the same time took advantage of the repairs necessary, but there has been no major repairs, no serious breaks or anything of that kind in there since we have been operating that line.

By Mr. Black:

Q. Mr. McGrew, considering the construction of the pipe lines through a given territory, what difference would the existence of hard surface roads in a given territory make in the ultimate cost of the construction of that pipe line per mile?

A. Unless the roads were constructed especially for the purpose of pipe line construction, it would not make any noticeable difference.

Q. The only difference that a good road would make would be in the item of hauling pipe and construction of the pipe?

A. That is the only real difference that it would have on it.

[fol. 93] Q. Mr. McGrew, what is the usual average cost of the item of hauling in the construction of a pipe line per mile in all the systems which our pipe traverses?

A. It has been our experience that the cost of stringing 8 inch pipe line will run between three hundred and seventy-five and four hundred dollars per mile.

Q. Good roads and bad roads?

A. General conditions taken in consideration all over a pipe line system. It is possible of course for the constructing of a pipe line to cost in excess of a thousand dollars a mile for hauling in swampy areas and things of that kind. I speak of $375.00 and $400.00 as being the general average cost of stringing pipe lines.

Cross-examination.

By Mr. Moore:

Q. Where do you live?

A. Shreveport, Louisiana.

Q. How often during the year 1923 were you up and over that part of the pipe line in this road district?

A. Personally I have not been over all the right-of-way in this road district.

Q. How often were you on the right-of-way in this road district during the year 1923?

A. To the best of my recollection I was on the pipe line right-of-way at two different times.

Q. How often were you on the pipe line right-of-way during the year 1924?

A. Once.

Q. Then [the] during the entire period of the construction of this second line, you were only on the pipe lines from one to three times?

A. That is correct.

Q. In your testimony as to the effect of good roads on a pipe line then you were ref-rring to your general knowledge of all roads and all pipe lines, and not to this particular section of road and pipe lines?

A. That is not strictly true. I have before me constantly detail maps of my pipe line rights-of-way everywhere which shows pipe line alignments, topography, water courses, open land, wooded land and every detail insofar as the general information that I may get. I do not consider that it is necessary for me to be personally on the right-of-way to know the exact conditions.

Q. You do not know then whether this right-of-way is across broken territory or up and down hill, or the character of it from any personal investigation?

[fol. 94] A. Not from having personally walked over each foot of this ground, no sir.

Q. I suppose, having only been here the limited times you mentioned, you do not know of your own knowledge how the pipe was put on the ground, nor how the men that laid it reached there to work, do you?

A. No, sir, I do not.

Q. You gave an argument I believe, giving your idea as to why the roads did not or could not, or did not benefit any pipe lines?

A. I said the improved roads.

Q. Do any roads benefit a pipe line?

A. Roads are necessarily useful in connection with pipe line work.

Q. Is it not easier to build or repair a pipe line through a territory that is a passable road than through territory without a road?

A. Depends entirely on the location of the road.

Q. If a road reaches within two miles of any section of a pipe line, isn't it an advantage over a pipe line that may be ten or twelve miles away from a road?

A. It might and might not be depending on the distance from other lines of transportation.

Q. You ship your pipe in over railroads and then haul it out over the roads, whether it is a road or whether you have to get a right-of-way to deliver it, do you not?

A. That is correct.

Q. Does it not cost money to open up a road across a territory where no road exists?

A. Right-of-way has to be opened up for other purposes other than transportation. You could not consider then the opening of a road as entirely chargeable against the right-of-way itself.

Q. But after opening up a right-of-way for the pipe line, that still doesn't give you a road does it?

A. It does.

Q. Are not the stumps, the branches, the hills, the depressions and various obstructions still there after the timber is taken away?

A. There may be some sharp ravines that have to be bridged, we would have to bridge that anyhow for construction forces.

Q. Would not that right-of-way be the same right-of-way that exists where a good road is being constructed? All you would have is cleared land instead of land without stumps after you have got the right-of-way?

A. In clearing the right-of-way for a pipe line it is taken into consideration there will be hauling down over the right-[fol. 95] of-way. For that reason the stumps are cut low like is the usual procedure for highway construction.

Q. You do not in clearing the right-of-way level up the rough places do you?

A. We do.

Q. Then you build a road as you clear the right-of-way?

A. Practically so. There is what we call right-of-way work done ahead of construction of pipe lines. In speaking of such right-of-way work it means that the wooded land is cleared of timber, all the sharp contours are leveled off in order to avoid the abrupt bending of pipe prior to its being placed in the ditch. That work is necessary as I say, to avoid the abrupt bending of the pipe, and in as much as it is necessary for that reason to do that it prepares a fairly good right-of-way, none of of which is charged against roads proper after it is utilized.

Q. Is that road, that is the earth that exists there which becomes soft in wet weather, it is of the same nature as any other territory lying between good roads and your pipe lines?

A. Subject to the same conditions.

Q. If you owned a house and lot and lived here in Texarkana, in your opinion would a good road be any benefit to that house and lot in the City of Texarkana?

A. Not from a pipe line standpoint.

Q. Now I am speaking of the standpoint of the house and lot?

A. I think it would.

Q. It would be a benefit to you if you wanted to drive over the road, wouldn't it?

A. Naturally you derive such pleasure from the use of good roads. But all you as an individual would benefit would be that it probably would enhance its value for the reason it would be conducive of thicker settlement of the territory effected.

Q. It would enhance its value very much and from that one could hardly estimate except in a general way?

A. That is true.

Q. You couldn't say it enhanced it 20 dollars or $500.00?

A. It is the general consensus of opinion of people every where that improved highways enhances the value of real estate and dwellings and things of that nature.

Q. Wherever you have a business or a factory or any enterprise employing labor, is it an advantage if you can have an ample supply of labor?

A. It is.

Q. Do not good roads to any enterprise give excess to labor that could not be had without the good roads?

[fol. 96] A. It does not generally speaking, I do not consider it so.

Q. When building a pipe line in territory adjacent to towns or cities, is — not often necessary to put in camps and take in men to do the work?

A. That is the general practice everywhere.

Q. Is it any expense to run a boarding camp?

A. Yes, there is expenses connected with it.

Q. Then if instead of running a camp these men can be taken in on trucks to do the same work, would that not save the expenses of the camp outfit?

A. Not necessarily so.

Q. Why not?

A. Just a matter of which is the most expensive. You might have a choice of two methods.

Q. Do you know which method was used in building this pipe line here in 1923?

A. There was two methods used, both methods were used.

Q. Where was the camp?

A. There was a camp used south of Mandeville. I don't know just how far up we came with the camp. I think generally speaking though, that our construction forces were taken care of outside of camps in this territory north of Mandeville.

Q. How were those laborers taken from the camp to the work?

A. I presume by automobile or truck transportation generally speaking, depending upon where they were located.

Q. They were carried over these roads in trucks to the neighborhood of the work?

A. That is true.

Q. Yet you say that is not a benefit to the pipe line?

A. I do not consider that that was necessarily a benefit, I might make this statement in this way to get it clear before the Court just what I mean. You may have a choice that is might present a convenience. There are territories through which pipes lines may pass where there is no good roads at all but there may — living in that community rather thickly settled with white people where construction forces can be boarded and lodged right on the work. On the other hand there may be a possibility of handling construction forces over short distances over highways to quarters somewhat remote. In territory where there is no facilities the camp method is used for housing forces. That in the main is the most satisfactory method under any circumstances on a big job. The satisfactory way is to encamp them. Then if you have a camp you can move a camp. Pipe Line [fol. 97] camps are usually moved every six miles. In other words, there is three miles of construction handled in the rear of the camp and from the same setting, three miles of construction is handled forward, then the camp is moved six miles, usually moved directly over the right-of-way.

Q. Would you consider if you had a plantation that it would be any benefit if you could take laborers down to pick cotton over a hard surfaced road?

A. I don't know, I am not a plantation owner.

Q. If you had any place that you had to employ labor and could carry them over a hard surfaced road and not have to keep houses and boarding outfits, would that be any advantage?

A. I could not say; I have had no experience handling that class of labor.

Q. I will ask you if you had any kind of enterprise from making ties on up to laying pipe and could carry laborers out as they were needed quickly over good roads, is it not an advantage to that business?

A. I would have to analyze the detail of the situation before I could make a statement as to which would be the most advantageous.

Q. You do not lay pipes continuously so you could put a camp at some times?

A. My experience in the last five years has been such that I have had continuous work.

Q. But that has been scattered over many miles of territory?

A. Yes, sir, but we have always during that time had the necessity of continually moving camps.

Q. Did you not keep a number of trucks employed hauling men during the entire construction period in this territory?

A. We have a fleet of trucks that we use everywhere, some of those trucks, I believe, were in this territory at that time.

Redirect examination.

By Mr. Black:

Q. Mr. McGrew, your experience as a pipe line man, in pipe line construction, does it make any difference how far the construction work may be from civilization or from habitation of the amount of work that is available for the pipe line construction work?

A. There might be a limit to that statement, Mr. Black generally speaking in any territory of the United States I would not consider it so.

[fol. 98] Q. Wherever there is pipe line work there is generally workers no matter how far they are, or how far from civilization that may be?

A. That is true; there is a certain class of people that follow the pipe line business just like they follow the circus business.

Q. Isn't it a matter of fact that they generally know that before the company does?

A. The grape line generally has advance information.

Q. Mr. McGrew, when you have a camp and construction work in a place where you haul the men, you pay the laborer the same amount per hour?

A. Yes, sir.

Q. Then you make no deductions for the camp expense from that laborer?

A. We make a deduction for the board.

Q. Then the man that lives in town or stays in town, or is carried out to work in the trucks, realizes more per day than the man who stays in camp?

A. That is true.

Q. And in that way you absorb the camp expenses in the labor?

A. Yes, sir.

Q. I will ask you Mr. McGrew, in the ordinary construction of pipe lines where the camp is moved about six miles, if the ordinary way of reaching the work each night and morning to and from the camp is not walking?

A. It is over *own* own right-of-way.

Q. And you never use the trucks for transportation unless you take them to the city?

A. No.

Q. Is your company considering the construction of any new pipe lines at the present time?

A. We are.

Q. Where is it?

A. From Smackover, Arkansas to the Mississippi River in Eastern Arkansas.

Q. Are there any good roads where that pipe line is going?

A. There are.

Q. In locating that pipe line, what considerations have you made of the good roads?

A. Not any.

Q. How did you determine the route which that line is to take?

A. Determined the route of this pipe line by the construction of the Ouachita crossing and using the straight line rule from the point of starting to the river crossing. That is the shortest route possible and therefore the cheapest. And that whole territory is covered with good roads because I was over there last week, there is plenty of good roads in that country. I don't know whether any of them [fol. 99] will be parallel to this line that I laid out on the map or not. Unless they are directly parallel there can be no benefit.

Q. In your experience of pipe line construction, I will ask you if the location of a city of the size of Texarkana with its highways leading to and from the pipe line right-of-way is any hindrance to the pipe line company in the construction of its pipe lines?

A. The crossing of improved highways presents an additional expense to us in that we have to meet certain expenses and requirements of the good roads. To construct a pipe line across an improved highway you have to approach the highway on either side, handle the embankment in a particular manner in order to prevent caving which requires certain bulk heading to be done, and then the rather slow process of using what we call a road auger has got to be used and bored through the sill underneath the hard surface and insert the pipe line in that manner, which is much more expensive than to cross the ordinary dirt road.

Q. With reference to the labor question, Mr. McGrew, what I had in mind was this: This city and its good roads detract the workmen from the camp at night?

A. That is true, it would work a certain handicap on your labor forces. These good roads make transportation quite accessible to centers of population where laboring forces are wont to gather at night, robbing them of rest, giving them opportunities to indulge in dope and things of that kind, to which they are generally inclined. In other

words, when construction forces are located close to centers of population we have more or less trouble with labor forces. That is the general experience.

Q. Do you have any camp rules which are invoked during the night?

A. Yes, sir.

Q. What are some of those rules?

A. Well, we usually have general instructions about lights out at ten o'clock and every one is supposed to be in quarters by ten o'clock or a reasonable bed time and infraction of those *of those* rules of necessity causes us to dispense with services of those that break the rules and that causes a heavy labor turnover, which is an added expense. An interchange of labor on the face of it seems like an inconsequential thing but constant changing of forces is an expensive thing.

Q. Do you permit any gambling?

A. We do not permit it but it usually goes on.

Q. Have you any rules with reference to the 18th Amendment?

[fol. 100] A. No liquor allowed in camp since the prohibition amendment. It is very difficult to keep it out because there is usually a still within a hundred yards of the camp.

Q. Mr. McGrew, in your experience, does the company get the best service on the wage paid the workmen that stays in the camp, or the workmen that boards in the city?

A. It is my opinion, and I think the consensus of opinion that labor housed in a company camp are the most efficient.

Q. The construction work that has been done by your company since the purchase of these pipe lines has all been done since the assessment made in the year 1920?

A. Yes, sir.

Q. With reference to the pipe lines that was in this district at the time this assessment was made, I will ask you to state to the Court in the company's administration and operation of that line, and its maintenance and inspection of it, in what way have these improved highways a*d*ded or [benefited] your company with reference to the lines already there?

A. The Standard Pipe Line Company purchased those lines in December 1922. Early in 1923 I started the construction of the other two lines that have been since built.

From the standpoint of operating those two lines that were there against which this assessment has been made, which we are now considering, from December until the time the Standard Pipe Line Company laid the other lines, I do not consider that the highways were any benefit whatsoever in the maintenance of those lines.

Q. Since that time have they had any effect or been of any benefit to you in the maintenance of those two old lines?

A. I have already stated that I do not think so.

Witness excused.

W. J. Springer, a witness sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Moore:

Q. What is your name?

A. W. J. Springer.

Q. You are chief of the joint Fire Department of Texarkana, Arkansas and Texas?

A. Yes, sir.

Q. And have been for a number of years?

A. Yes, sir.

[fol. 101] Q. I will ask you whether you are acquainted with the character of the road from here to Mandeville going out along the Iron Mountain railroad?

A. Yes.

Q. That is one of the improved highways here is it?

A. Yes, sir.

Q. Did you one day last week, with the crew of the cities of Texarkana, make a run with the Fire Department from here to Mandeville for the purpose of assisting in putting out a conflagration at the pumping plant of the Prairie Pipe Line Company or Standard Pipe Line Company?

A. Yes, sir.

Q. How long did it take to make that run from here to the pumping station?

A. I did not time it; I would say about 15 minutes.

Q. What is the distance there?

A. Six miles I understand.

Q. As a result of that was the fire extinguished so no very heavy damage occurred?

A. No, sir, the fire was not extinguished.

Q. You put it out after you reached there, did you?

A. No sir.

Q. When was it put out?

A. It burned out, so I understand, about 11:30 that night.

Q. What was done to prevent the spread of that fire by the Fire Department after reaching Mandeville?

A. We put a pump to work until the gate house boiled over, or rather the oil came back, boiled over and ran down the pit inside of the pump house. Then we quit pumping water and the only thing that was done then we replaced a door inside of the main engine room, a fire door which had burned and flooded that room. There was some ditching done and dikes thrown up. That was done by the company's men.

Q. As result of the work that was done was the fire prevented from spreading to other buildings and oil tanks and preventing a serious conflagration?

A. I would say that that was problematical. I would say the replacing of that fire door, and the ventilation possibly kept it from burning.

Q. The property was saved from burning?

A. The engine room, yes sir, and the rest of the property.

Q. Now would or could you have taken the fire apparatus over that road from here to Mandeville if it had been the ordinary country dirt road and not improved, could you have taken it, or would you have taken it?

[fol. 102] A. Well, that depends of course, on the character of road. Ordinarily I will say we do not answer calls on unimproved roads

Q. Why is it that you do not answer those calls?

A. On account of the condition of the road, and generally the condition of bridges on unimproved roads.

Q. What is the danger to men or equipment that you take to go over an unimproved road?

A. Well, you are liable to kill some men, of course, and tear up a piece of equipment. That equipment is pretty heavy, weighs about 7½ tons, just the ordinary country road bridges won't hold up that equipment.

Q. Then in this present instance when notified, you made the run because you knew you had an improved road over which you could go to the assistance of the parties calling for help?

A. Yes sir; I will say this, a short time back we refused to answer a call from Atlanta, Texas on account of the road.

Cross-examination.

By Mr. Arnold:

Q. Chief, what has your experience been with reference to fighting an oil fire with water?

A. We have had some here that we have put out with water.

Q. Did you have any effect on that one at all out there?

A. No, sir.

Q. It boiled over even with the water going in?

A. Oh yes.

Q. How many men did you have with you?

A. About a half dozen.

Q. How many men did the Standard Pipe Line Company have out there?

A. About 75.

Q. Now with reference to the work that was done, there, this closing of the door there, what per cent of that work was done by you and your gang, and what per cent done by owners of the property?

A. The majority of it was done by owners of the property. However it was done, I believe, at my suggestion.

—. Was there a ventilator in the room of that building?

A. Yes sir, but it was not ventilating the room properly.

Q. You broke out some windows too?

A. Broke out some skylights.

Q. Did they not ask you to desist?

A. No, sir.

[fol. 103] Q. Didn't anybody stop that breaking of skylights?

A. No, sir.

Q. Well, in your opinion, how much property did you save the Standard Pipe Line Company of Louisiana by making that run out there?

A. I think I have just about answered that question. I think that is problematical. It is a question of whether the ventilation and the stopping of that fire door, and I also suggested the repairing of where oil goes through with asbestos. It is a question of ventilation there.

Q. The fire burned until the supply of oil was exhausted, didn't it?

A. Yes.

Redirect examination.

By Mr. Moore:

Q. When you arrived there this door you speak of was still open?

A. Yes, sir. This door was closed then. They ran a small line through it and had it into the pump room. After the pump room was afire all over, been burning a little bit, I suggested that they take this small line out so the door would close and not *prevent* the flames to enter the engine room. They did that and then afterwards the door burned out. I forget the gentleman's name in charge. I would go to him with those things and suggest that he do that and also break out some of the skylights.

Q. Because of your knowledge and experience in fighting fire, your suggestions were accepted and the fire was extinguished and burned itself out and your suggestions were carried out?

A. I suppose they did. He did not seem to question the suggestion. He was very nice and seemed willing.

Q. And in breaking out those skylights, that was done to prevent the flames from spreading?

A. Yes sir, I did not do that until you could go in there and it would cause your eyes to water and burn.

Recross-examination.

By Mr. Arnold:

Q. Chief, your efforts and the efforts of the pipe line people were directed towards the stopping of a fire which was located up there on a piece of land where they had a pumping station?

A. Yes, sir.

Q. There was no pipe line on fire, in fact that would not get afire as anybody knows. This was a building where there was some oil leakage on this piece of land?

A. The fire was in what they called their gate house.

[fol. 104] Redirect examination.

By Mr. Moore:

Q. Did you go of your own suggestion or did you go at the request that the fire apparatus come out?

A. We went at their request.

E. L. STERN, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Arnold:

Q. Please state your name and occupation?

A. E. L. Stern, Superintendent of the Texas Pipe Line Company in Louisiana.

Q. Where are you located?

A. Shreveport.

Q. What kind of pipe line is under your control and direction as Superintendent for the Texas Company?

A. I have charge of all the company's lines in Louisiana.

Q. I will get you to state to the Court whether or not you have considered the question of what benefits there is to pipe lines derived from—due to improved roads. and what is your knowledge of such matters?

A. Well, I can't see any advantage.

Q. Can you give your thoughts on this question, some reasons that you have?

A. Well, the first reason, one reason is when we arrange to lay a line we never take the road into consideration at all, that is, we run on what we call an air line from starting point to destination, and for that reason there is not very much good roads that comes in contact with pipe lines.

Q. State to the Court what the fact is with reference to adding or decreasing the expense when you come to a good road and it becomes necessary to cross?

A. Well, when we come to a good road in crossing what we call a dirt road, you dig right through it, and when you come to a good road we have to bore through with a road auger, and then we case the line under the good road outside of the pipe line with a size pipe larger than the line that we might be constructing, and the casing is an extra expense, and the excavation across is most always more expensive because good roads are ditched out deeper on both sides, and we have to go under this excavation, ditches and things like that.

Q. If there is a break in the pipe that is under this hard surfaced road, would not that be difficult to handle and become more expensive than a common ordinary dirt road?

[fol. 105] A. It would if it is deeper, like I say, in nearly all cases ditches on both sides of good roads are deeper.

Q. I have reference to a leak in the pipe, if there should be a leak, what difference is there in repairing it by removing the hard surfaced road?

A. We would not move this hard part. We bore a hole and put the casing in. We catch it on one side of the road and pull it out of the casing and shift it in and screw it on one side of the flanging.

Q. Then there is additional expenses to what it would ordinarily *would* be?

A. It is account of the deep ditching on both sides.

Q. Now with reference to maintaining that pipe line after it has been once laid, is that kept up by following a line of pipe and the right-of-way, or is done by traveling around on the good road?

A. We have a line walker who walks from station to station, some times forty miles, some times sixty miles, the line walker makes a trip a week, he goes to his destination and comes back, and on Monday morning he starts over the line again.

Q. How many men do you have, well—well, how much line can one man take care of?

A. One man takes care of a station to station, some times forty miles, and some times particular stations are as far as sixty miles apart.

Q. Those men are not employed traveling around on the public roads?

A. No, sir.

Q. Those men you have are going up and down that right-of-way?

A. Yes, sir.

Cross-examination.

By Mr. Moore:

Q. You do not know anything about this pipe line and the road we have under discussion now?

A. No, sir.

Q. All you are doing is, you are giving a general discussion whether it was here or Louisiana, of the facts?

A. No, sir.

Q. Do you think the building of good roads helps the telegraph or telephone lines?

A. I do not see how it could help them. It would help it to a certain extent if the road parallel the telephone lines.

Q. That is, you would have access to every part of it?

A. Certainly.

Q. If you had good roads right along the pipe line they would help the pipe lines?

[fol. 106] A. The only way a good road would help the pipe lines I would say would be in constructing the lines. It might have a tendency to reduce the cost of stringing the pipe, which is small.

Q. You mean assist in hauling?

A. Yes, sir.

Q. If, instead of having it right along parallel to every station, if you could get a road within a mile of the pipe line, would not that be some help?

A. Well, those things would have to be considered, like we might be paralleling the railroad somewhere and the switch every six or seven miles, the chances are the good road would not come in contact from the hauling of the line from the railroad out to the present place we would want to string it.

Q. In shipping out material and pipe is not it an advantage to have a sidetrack every few miles along the road to haul pipe?

A. It would reduce the cost of hauling your pipe if you had it, but there ain't any such.

Q. Then if you could have good roads that reached within a mile or two miles of every part of your pipe line, would not that assist somewhat over having a good road that was ten or twelve miles away from the pipe lines?

A. That would be the same as the railroad. The stringing of a pipe line is small compared to the other expenses connected with it and if you had a road,—you haven't got it and never will have on pipe lines every mile, it would be the same. I have not seen any of those kind of places.

Q. Do you think good roads are any advantage to any kind of business that is in a country?

A. Well, they might help the farmer hauling his trucks.

Q. Would it help the man running a manufacturing business?

A. I do not know anything about the manufacturing business.

Q. Would it help the man that is operating an iron foundry or any other kind of business if he had hard surfaced roads that he could get people in and out to his business?

A. I do not believe so; I do not see what an iron factory would sell.

Q. Do you think an access to any business or property, whether an iron factory or farm is of any advantage?

A. It would not help the pipe line, nor. It is in the ground, for the reason we so seldom have an occasion to go to it, I couldn't see it would be an advantage to it.

[fol. 107] Q. Do you ever go and visit any of your pipe lines?

A. Sometimes.

Q. Do you use an automobile in going?

A. Our 10 inch line goes from Shreveport to Louann, Arkansas. I have been over in this country going on 14 months and the line was laid when I came here and a week ago last Monday I was over the line on a Ford. That is the only time I have been on it in going on 14 months.

Q. Then you are not the person that makes regular trips over a pipe line?

A. I haven't any occasion for making any trips over the line unless the line is in trouble.

Q. If you were building a new line of pipe, would rather haul the material over a good road?

A. If the road parallelled the pipe line I would prefer hauling it on the hard road.

Q. Suppose it did not parallel it, but every two miles the good road crossed the pipe line, would not you use that good road to the point of crossing and then haul it to the distribution place?

A. We would probably use it, but we do not figure the savings in figuring out the cost of new pipe line. What little good road we have we do not take into consideration.

Q. You do not take it into consideration, but when you have work to do and the good road goes toward that point you use it?

A. Naturally, the most economical way.

Witness excused.

H. C. Black, a witness sworn on behalf of the plaintiff, testified as follows:

Direct examination.

By Mr. Arnold:

Q. Please state your name and occupation?

A. H. C. Black, tax commissioner of the Prairie Pipe Line Company.

Q. Mr. Black, how long have you been tax commissioner of the Prairie Pipe Line Company?

A. Since the first day of July, 1919.

Q. What is your business for your company in that line, in that position, what is the scope of your duty?

A. I am the employee or the official of the company that has charge and supervision of all activities of the company with reference to making of renditions of its properties, the payment of taxes, upon its properties, and the handling of [fol. 108] every item and form of tax, with the exception of the income tax.

Q. What lines fall within your jurisdiction, where are they located?

A. The entire system of the Prairie Pipe Line Company.

Q. Just describe that?

A. Extends from middle Texas through Oklahoma, Kansas, Missouri, Iowa, Illinois and Indiana.

Q. Did it include the Prairie Pipe Line Company, the pipe line running from Oklahoma through Arkansas into Louisiana to Baton Rouge, that part of the pipe line in Miller County?

A. Had a pipe line running from Oklahoma-Arkansas State line to the Arkansas-Louisiana State line which was sold and transferred to the Standard Pipe Line Company Incorporated.

Q. Did it run on through Louisiana to Baton Rouge?

A. Our line did not. The Standard Pipe Line, or the Standard Oil Company of Louisiana at that time owned a line from the Arkansas-Louisiana State line to the city of Baton Rouge.

Q. That was interstate in reference to what? Was it an intra-state or interstate line?

A. Our line was a part of the pipe line extending from the interior of Oklahoma to Baton Rouge, Louisiana, but the different parts were owned by the Oklahoma Pipe Line Company, and the one connecting carried it in conjunction with the other two corporations.

Q. When did your connection with this part of the pipe line in Arkansas and Oklahoma that you refer to cease?

A. After the payment of taxes for the year 1922, which was in April, 1923.

Q. Did you pay the general taxes for your company in 1920, 1921 and 1922 in Miller County, Arkansas?

A. And 1923.

Q. Did you make the assessments for general taxation?

A. I made the returns, the state tax commission made the assessment.

Q. For what years?

A. For the years 1920, 1921 and 1922.

Q. You may state whether or not you returned the pipe line of this company as personal property to the Arkansas Tax Commission?

A. There was not anything in that return defining the pipe line as being personal property, but it was assessed by the Tax Commission as personal property.

[fol. 109] Q. Why do you say so?

A. Because the certificate bore that language, the certificate of the State Tax Commission said everything is assessed as personal property.

Q. State whether or not it embraced anything except more pipe or more lines, that assessment?

A. The assessment is made upon the pipe lines included and intending to cover a tangible and intangible value.

Q. Was this assessment that you made, made in accordance with the sub-division 4 of the Section of Crawford & Moses Digest, providing for the assessment of pipe lines?

A. Yes.

Q. Which embraced all classes of property?

A. Yes.

Q. Did that include the consideration of the entire line of property in and out of Arkansas?

A. In determining the value of the pipe line in Arkansas they took into consideration the entire property of the corporation of its entire system and its earnings.

Q. And what was the result having taken into consideration the entire property with reference to what was allocated to Arkansas it would place a value upon the entire property of the company and allocate that portion of the value which they fixed which the pipe line mileage in Arkansas bore to the total pipe line mileage of the entire system?

—. ——.

Q. Was the real estate of the company distributed with reference only to the school districts in which it was located, or with reference to the various school districts through which the pipe lines run in Miller County?

A. That was different in different years. Sometimes they assessed all the property in Arkansas as pipe lines. There was no definition or direction upon the certificate of assessment showing which was real estate and which was personal property.

Q. In addition to that assessment the local assessor assessed the real estate?

A. I must add that in making my return to the Tax Commission I always returned the real estate and without that they assessed it.

Q. You returned it to the Arkansas Tax Commission, real estate, and the County Tax Assessor took real estate property and put it in the real estate tax?

A. Yes.

Q. But the pipe line went on the personal books?

A. Yes.

Q. Now then, Mr. Black, state whether or not Mr. Hillford is living?

[fol. 110] A. He is not.

Q. He was the local workman here in charge of the pumping plant in 1920?

A. Mr. J. B. Hillford was the superintendent, not superintending engineer, or maintenance superintendent of the Prairie Pipe Line Company, his only duties was to have charge of the operation of the pipe line properties.

Q. He did no business for the company, conducted no business for the company and had no authority beyond an operating superintendent?

A. No, sir.

Q. Was he designated as agent for this company?

A. He was not.

Q. State whether or not he had any authority whatsoever with reference to the financial management of the company, or with reference to tax affairs?

A. He had nothing to do with any item of business with the Prairie Pipe Line Company. The Prairie Pipe Line Company did no business in Arkansas, maintained no office, paid no franchise tax in the State of Arkansas, was solely in the transportation of crude oil in interstate commerce. The movement of the oil through the pipe line system was under the pipe line dispatcher at Independence, Kansas, and all tenders of oil made to us. The only thing Mr. Hillford had to do was to see that the pipe lines remained in shape and that the station ran when he was told to run it.

Q. Did he have any authority to take notice of any assessment made by Miller County Highway and Bridge District?

A. Absolutely not.

Q. State who was the tax commissioner preceding you, of this company?

A. Mr. Van Tuyl.

Q. Where did he live?

A. Independence, Kansas.

Q From what time was he the Tax Commissioner?

A From the beginning until July 1, 1919.

Q. I am talking about Mr. Van Tuyl?

A. That is what I am talking about.

Q. And how long?

A. From the beginning of the existence of the Company until July 1, 1919.

Q. What period did that cover?

A. February 1, 1915, the Company was organized.

Q. Was Mr. Van Tuyl the Tax Commissioner at the time of the passage of this act of the legislature first creating the Miller County Highway and Bridge District?

A. He was.

Q. Did the Prairie Pipe Line Company or its officers know anything about the assessment of these alleged bene-
[fol. 111] fits against its pipe lines under that act of 1915 until these letters passed between Mr. McAntire and Mr. Little that we have introduced in evidence?

A. I have no personal knowledge on that line, Mr. Arnold.

Q. Did you find this correspondence in the office of the Company?

A. I found the correspondence in my office. It is the old files of the Tax Department of the company since its beginning.

Q. That is where it belonged, is it not?

A. Yes, sir.

Q. Is that all the correspondence you found in regard to this matter?

A. With reference to the assessment of 1916.

Q. How much do you find that the Prairie Pipe Line Company paid annually up to the time that this new assessment was made on account of this road district?

A. The year 1916 we paid tax on the pipe lines of $395.20. Well, we paid $14.40 on the Miller County Highway and Bridge tax against real estate.

Q. This $395.20, was that the pipe line assessment to this Miller County Highway and Bridge District?

A. For the year 1916.

Q. When was that paid and due?

A. I think it was due under the statute the 10th day of April and was paid on the 10th day of April, 1917, and that is, it was receipted by Mr. Gurley on that date.

Q. Do the assessments remain uniform to that amount until this new assessment was made in 1920?

A. Did not.

Q. What were the amounts each year that you finally paid?

A. The tax for the year 1917 was $395.60, for the year 1918 $416.01. That is the last we paid.

The Court: You paid three payments?

A. Yes.

Q. Were you familiar with the injunction suits that were referred to this morning?

A. Quite familiar.

Q. And at the time that these payments were made, were you under the compulsion of paying them or bringing these suits to enjoin the Collector from collecting them?

A. After I became Tax Commissioner of the Company I investigated the tax as levied by the Miller County Highway and Bridge District, I determined to my own satisfac-[fol. 112] tion that Mr. Van Tuyl had minimized the tax and the amount of the tax and we did not desire to pay the tax any further, and attempted to pay the general tax without paying the special tax on Miller County Highway and Bridge District, which the Collector refused to accept unless I paid the other tax. I then came to your office and had the necessary papers drawn *from* the purpose of securing an injunction to permit me to pay the general taxes of the company without the other taxes.

Q. I believe the result of that application has already been stated this morning?

A. Yes.

Q. Did that occur three successive years?

A. Yes sir, until finally we carried the case to the Supreme Court of Arkansas and the Chancery Court decision was affirmed.

Q. Now Mr. Black, you may state whether or not the Texarkanian has a circulation in Independence, Kansas?

A. Not to my knowledge it has not.

Q. Do you know anything about the alleged notice stated to have been published that the assessment had been made and applied in the County Clerk's office in the year 1920 on account of the 1917 amendment to this act creating the district?

A. I never heard of any such assessment, or never had any knowledge of it until I checked my tax back to the year 1920, which was in the latter part of March, 1921, and I dis-

covered that the taxes had jumped from $418.00 to $600.00. On investigation I found there had been a re-assessment some months before, along in July the previous year.

Q. Under the act at that time it had passed the time that you could appeal to the board and that was your first knowledge?

A. That was my first knowledge. I refused to pay this tax and secured the injunction which restrained the Collector from accepting the general tax, having in mind that the Miller County Highway and Bridge District would bring suit after the property was sold to Standard of Louisiana, that company brought it.

Q. That tax was paid then for 1918?

A. Yes, was for the year 1918.

Q. Mr. Black, do you know how many lines of pipe were in Miller County of the Prairie Pipe Line Company in this district at the time this sale was made to the Standard Pipe Line Company Incorporated December 1, 1922?

A. There were two parallel 8 inch lines.

Q. When have they been laid?

A. First line was laid 1909, second one in the year 1915.

[fol. 113] Q. Now prior to the time you were tax commissioner, what connection had you with the Prairie Pipe Line Co.?

A. I was in the right-of-way and claim department.

Q. For how long?

A. Since the 1st day of February, 1915.

Q. Were you familiar with the obtaining of the right-of-way on which these pipe lines were laid and with the contracts?

Q. Quite familiar. I settled quite a bit of damage on the line through 1915, through Arkansas.

Q. Those contracts giving the right to lay the lines were made during your administration?

A. Yes, some of them.

Q. Do you know whether there was a telephone line or telegraph line belonging to this pipe line in 1920?

A. In 1920 the telephone or telegraph line did not parallel the pipe line. It paralleled the pipe line from the Louisiana line up to Mandeville, then from Mandeville it came into Texarkana over some other pole lines, and from Texarkana went north on the highway to the city of Index.

That is, it was just a wire, no poles. We paid an annual rental for the permission of having our wires attached to the poles of some other company.

Q. Do you know the value of that wire per mile?

A. About $15.00 per mile.

Q. It was just one wire?

A. Just one wire, No. 9 steel wire.

Q. The poles did not belong to the company?

A. No.

Q. The telephone company gave the permission to have your wire on their poles?

A. It was the Bell Telephone Company down to Texarkana. It might have been the Western Union or the Missouri Pacific to Mandeville.

Q. Mr. Black, there were 7 seven years passed that has not been paid and now suit has been brought by the road district either against yourself or the Standard Pipe Line Co.?

A. None is brought against the Prairie Pipe Line Co.: I don't know about the Standard.

Q. How much land is occupied by this pipe line?

A. Each line occupies a space of not more than 9 inches wide.

Q. Estimate the acreage actually used by your company?

A. About 9/100 of an acre to a line per mile.

[fol. 114] Q. Upon what does the earnings of that pipe line depend?

A. Depends upon the traffic or the charges received on account of the transportation of crude petroleum oil that has been tendered to it for transportation as a common carrier.

Q. Then it depends upon the transportation of crude petroleum?

A. Depends upon the production and the demand somewhere.

Q. Is there an inexhaustible field of petroleum where your lines have been laid?

A. It has never been discovered. The common experience of mankind with the deposits of oil is being exhausted, that the old and established fields are declining in production and new production coming on.

Q. When you cease to have oil tendered to you your revenues will be decreased?

A. When the oil ceases to be produced, yes, the system will have no value beyond a junk value. It will have no value as a pipe line transportation company.

Cross-examination.

By Mr. Moore:

Q. Instead of the production of your lines decreasing, it has increased very much of late, has it not, the oil that is being carried through your lines here in Miller County?

A. We have no lines in Miller County, Mr. Moore and I haven't any knowledge as to the business which the Standard Pipe Line Company of Louisiana conducts.

Q. You have heard the testimony that instead of using two 8 inch lines through Miller County, that they are now using 4 8 inch lines?

A. I have heard that.

Q. Would it not be very bad business judgment to have two 8 inch lines and to build two additional lines unless you have production to carry through those lines?

A. I agree with you that it would, still I have no personal knowledge of the amount of oil they are carrying.

Q. You must not know that instead of the oil in Oklahoma decreasing it has been increasing in the last two years?

A. No sir, I do not know that, and I do not think you do.

Q. Do you know it has been decreasing?

A. I haven't any personal knowledge of that either. The only information I have was from the report published by the American Petroleum Institute and those reports are based upon information from the United States Geological Survey and from the different companies in the field.

[fol. 115] Q. But those reports and your general knowledge in the industry, would you say that it is likely to continue in the future as an industry and as stable one as long as this sawmill industry?

A. I would not because the products which is used by the saw mill though being depleted, is being re-supplied by reforesting by the government, while we do not know what the deposits of oil is. We do know that the supply is not

being augmented by the efforts of nature or the ingenuity of man.

Q. But we do know that the supply is being augmented?

A. The production is being augmented, the supply will never change.

Q. Well, call it production. There is nothing to indicate in the immediate future that these lines in Miller County will have to be junked because of lack of oil?

A. Every indication points to the approach of that state.

Q. Is there any change in the indications now from what it was two years ago in 1923 when these two additional lines were built?

A. Yes, we thought it was, that is, that they had the enormous flush production in the State of Oklahoma, that has fallen off about 50% of what it was. The fields in Texas to which the Prairie Pipe Line Co. laid the two 8 inch lines to take care of 60,000 barrels has only produced 10,000 barrels with five competing pipe lines in there.

Q. You don't know of anything to indicate that these lines are not being used now to as full capacity as at the time you sold them?

A. If they are not being used any more, they are not being used much. We wasn't using them much then.

Q. You stated that Mr. Hillford was in charge of the pumping plant here in Miller County during the time your company owned these lines?

A. He was the operating superintendent.

Q. Did he not have an office in Texarkana?

A. He did.

Q. And was in charge of superintending and looking after the pipe lines and the pumping plant in Miller County?

A. Looking after the operation of the pipe line and the pump station.

Q. Had his office in Texarkana, did he not, had a direct telegraph wire that went to the home office in Kansas?

A. There was direct telegraphic connections, private wire.

Q. And did he not make daily reports to the company in reference to matters concerning them in this section?

[fol. 116] A. No; he made certain reports which are required daily, that is, he reported each day the amount of oil

that passed a certain station. He reported any leaks that came upon the lines, he reported any catastrophe that might happen to it, he reported anything else, but he was not in any sense a business agent of the company.

Q. You have given a statement as to the amount of taxes paid for the years 1916, 1917 and 1918. When did you take charge of paying those taxes?

A. July 1918.

Q. The taxes had not been paid for this road district for 1919?

A. It was not due until the next April after I took charge.

Q. When did you first learn that road taxes were assessed against the pipe line company?

A. Sometime after I took charge of the tax department in going through the Arkansas files I discovered the files with reference to this Miller Highway Bridge Improvement District.

Q. That was during the summer or fall of 1919?

A. Prior to the time the taxes were due the next April, which was 1920.

Q. Then you knew sometime during the year 1919 that there was a road district in Miller County that was assessing taxes against the pipe line?

A. I did.

Q. And during the year 1919 at your instigation this first suit to enjoin the collection of road taxes was brought?

A. Absolutely.

Q. And similar suits at your instigation were brought during the years 1920 and 1921?

A. Absolutely, every one. I went through these files and I think I made a trip to Texarkana and went over the records here. I discovered that Mr. Van Tuyl had an erroneous conception of what this assessment of tax was and when I familiarized myself I made up my mind that that tax was so flagrantly discriminatory that it violated rights of my company guaranteed to it by the Constitution.

Q. Then you knew about this road being in existence and attempting to collect taxes during 1919?

A. I did.

Q. When were you in Miller County first during the year 1920?

A. The latter part of March.

Q. And when were you here again, if at all?

A. A year later.

Q. You were here only once in 1920?

A. Only once.

Q. Did you make any investigation at the time you brought this injunction suit in 1920 as to the amount of taxes?

[fol. 117] A. Yes, I knew what the amount was.

Q. In making that investigation did you not learn that a re-assessment had been made during the year 1920?

A. I do not think that was in March, 1920. I knew nothing, or heard nothing, as I stated before, the first knowledge that I had of a re-assessment came to me when I came here about March, 1921.

Q. But you did know there had been the first assessment?

A. I knew that there had been an attempted assessment.

Q. It was an assessment, a lien and a cloud. You knew there was an assessment in March, 1920 and you learned when you came back to pay next year's tax that there had been a new assessment?

A. Yes, sir.

Q. What was the cost in the increase in the amount of taxes collected, was it caused by a bigger rate in the assessment benefits or caused by an increase in rate charged?

A. It must have been in rate charged because there was only an increase of $200.00, Mr. Moore. I took it from Mr. Van Tuyl's record that he thought the ultimate tax to have been paid by this company was $5,934.00. He was willing to pay $5,000.00 but I wasn't willing to pay $60,000.00. That is what this first voucher that we paid contained the statement that the total tax to be paid was $5,934.00, one fifteenth of which is $395.60. That was his conception of the tax.

Q. Have you ever been out over this road to the plant at Mandeville that is owned by the company?

A. Never.

Q. You never have been to Mandeville?

A. Yes sir, I went over the Missouri Pacific.

Q. Then you left the Missouri Pacific at the station at Mandeville?

A. That was in 1915, Mr. Moore.

Q. Then you have never been to Mandeville since the road was completed?

A. No, sir.

Mr. Arnold: We will introduce the exhibit referred to a moment ago. It was the certificate from the Arkansas Railroad Commission showing the assessed valuation of property of this Company as being personal property.

Said certificate being in words and figures as follows:

"Exhibit H, JKP

Pipe Line Certificate

Name of Company: Prairie Pipe Line Company.
Address: ——.

Value of real estate used in operation, pipes, telephone equipment, regulators, services, meters, machinery, and [fol. 118] equipment, couplers, materials, right-of-way, office furniture and fixtures, and all other property used in operation belonging to or operated by the above-named company on the first day in May, 1920, located in the county of Miller, State of Arkansas, and in the cities and incorporated towns of said county, as fixed by the Arkansas Railroad Commission for the year 1920.

School Districts

No. or name of school district	Description of property	Valuation in school district
15	Value Pipe Line Machinery etc.	27,384
25	" " " " "	30,604
28	" " " " "	33,712
35	" " " " "	38,584
37	" " " " "	9,044
1	" " " " "	36,288
14	" " " " "	12,628
34	" " " " "	24,248
2	" " " " "	157,164
7	" " " " "	2,240
19	" " " " "	10,984
30	" " " " "	1,036
39	" " " " "	28,924
2	" " " " "	17,080
32	" " " " "	42,700
20	" " " " "	23,324

No. or name of school district	Description of property	Valuation in school district
23	" " " " "	51,380
36	" " " " "	25,200
Total		572,488

Cities and Incorporated Towns

For City Taxes Only

Town or city	Description of property	Value in city or town
Texarkana	Value all personal property	2240

NOTE.—This assessment includes all property used in operation, both real and personal.

Office of Arkansas Railroad Commission, Tax Division, Little Rock, Arkansas

I, E. W. Brown, Secretary of the Tax Division of the Arkansas Railroad Commission, do hereby certify that the [fol. 119] above is a true and perfect statement of the value of all property belonging to or operated by the Prairie Pipe Line Company on the first day in May, 1920, located in the County of Miller, State of Arkansas, and in School Districts, Cities and Incorporated Towns in said County, and to be taxed therein for the year 1920, as fixed by the Arkansas Tax Commission.

In witness whereof, I have hereunto set my hand and affixed the seal of the Tax Division of the Arkansas Railroad Commission this the 9 day of February, 1924.

E. W. Brown, Secretary Tax Division."

Plaintiff rests.

H. G. SANDERSON, a witness sworn on behalf of the defendants, testified as follows:

Direct examination.

By Mr. Moore:

Q. What is your name?
A. H. G. Sanderson.

Q. You occupy the position as collector for the bridge across Red River near Index, do you?

A. I do.

Q. How long have you occupied that position?

A. Since the first of September, 1923.

Q. In order to reach that bridge from Miller County, or to leave that bridge coming into Miller County, is it necessary to go over the good roads built by the Miller County Highway and Bridge District?

A. There is two ways to come in. You can come in over the Miller County Highway by Paup's Spur and Mandeville, or you can come in by the State line, but to go over the State line you have to go over part of the Miller County highway before you reach this State line.

Q. After reaching State Line you go on to that highway again, after you leave the State of Texas?

A. Yes, sir.

Q. I will ask you whether or not during the years 1923 and 1924 the Prairie Pipe Line Company were employing a large number of men in rebuilding or repairing their line through Miller County?

A. Yes, sir.

Q. Did the pipe line Company use trucks and haul any considerable number of men across that bridge over to the work that they had going on over the pipe line?

A. They hauled a great number of men from both sides of the river.

[fol. 120] Q. Have you a record that you have looked for showing during any month the amount of money that was paid you by the representative of the pipe line Company for crossing trucks over the bridge?

A. I find three checks that was given me for toll over the bridge.

Q. Give the dates and amounts of those checks.

A. October 13, 1923, $55.45; October 18, 1923, $55.00; October 25, 1923, $63.80.

Q. Now who paid you that money, and what position did he occupy with the pipe line company?

A. M. D. Lee gave me the first two checks and L. H. Cummings gave me the last check. They seemed to be in charge of the work.

Q. Those checks were given for crossings made by trucks or automobiles?

A. Yes, sir; I can explain to you we issued a receipt for everything that crosses the bridge, and you save them having the money each time a truck or man who would cross there asked me to hold those receipts for so many days and then the foreman would come around and take up these receipts.

Q. What was the amount per truck or car?

A. Automobiles 50c, trucks 75c and heavy trucks $1.00, and then they had a number of wagons, two mule and four mule.

Q. [When] those trucks came over there what was on those trucks?

A. Sometimes they would have pipe and sometimes tools maybe, and different things.

Q. Were there any trucks that ran regularly that brought a large number of men on them to labor on the pipe line?

A. Yes, sir, they had one white truck that seemed to be hauling men from Mandeville out to the river, made two or three trips a day.

Q. Now that truck would come from Mandeville out over these roads and then cross the bridge in Little River County?

A. When they crossed the river with the line, they would cross the bridge, but before that they would stop and the men went down the river from the bridge and worked on the line.

Q. In coming from Mandeville was there any way that a truck could come to the bridge save over these good roads in Miller County?

A. No, sir.

Q. You are acquainted with the system of good roads?

A. Yes, sir.

[fol. 121] Q. Now the amount you have given here, were those that crossed during three weeks' time?

A. I couldn't say how much besides this in money.

Q. In addition to this?

A. Yes, sir.

Q. For how many months did that work go on on the pipe line?

A. From the time I went there the first of September until the last of 1924.

Q. During the entire fall and part of the winter then?

A. The fall of 1923 and practically the whole of 1924.

Q. Now what were those men and trucks engaged in doing on the pipe line, if you know?

A. I couldn't say personally, I never went—I did pass, too, once, they were working on the line on the other side of the river. They were distributing pipe, digging ditches, putting pipe in, joining it up and painting.

Q. You say some came from Little River County across and a large number came out regularly form Mandeville?

A. Yes, sir.

Q. Do you know whether a camp was kept by the Company at Mandeville where these men stayed at night?

A. I couldn't say about that.

Q. Have you ever had any experience doing work either on good roads or farms or places where you have employed laborers?

A. Yes, sir, I have had considerable experience.

Q. You used to run a plantation in Little River County?

A. Yes, sir, I have one now in Miller County and one in Little River County.

Q. Did you not [assis-] in building some of the good roads in Little River County?

A. Yes, sir.

Q. From your knowledge of matters, is it or is it not an advantage where you are working men to have a good road by which these men may be transported back and forth to the work?

A. It is.

Q. From what you saw of the work along and over the pipe line, was it cheaper or more expensive to haul that pipe over this good road to where you could distribute it, than it would have been to have hauled it over the ordinary fields or dirt roads?

A. My opinion is that it is a whole lot cheaper.

Q. Over which could you haul the biggest loads, over the gravelled roads or over the fields and through the woods?

A. You couldn't haul the loads that they hauled over the country roads at all over common country roads.

[fol. 122] Q. Did they use trucks in bringing that pipe out?

A. A great deal of it they did, and they hauled considerable of it out in wagons.

Q. When it was brought on wagons was it hauled and transported along the pipe line, or put off in convenient places where it could be hauled out by wagons?

A. They had a dumping ground right close to the bridge where they unloaded for the trucks and then reloaded on wagons and hauled it down on the ground.

Q. Was that the dumping ground immediately joining the good road?

A. Right at the side.

Q. Then they would unload at the good road and then dump it and would haul it out on the good road?

A. That is the way I understood it.

Q. Where was that material hauled from?

A. I couldn't say about that, Mr. Moore. My understanding was they brought it from Mandeville.

Q. What is the distance from the bridge to Paup spur about?

A. It is about 7 and ½ miles.

Q. What is the distance about from Paup Spur to Mandeville?

A. It is a mile and a half, I judge.

Q. Did they haul any of the pipe over the bridge and distribute it at places over in Little River County?

A. Yes, sir.

Q. Now you have the amount of tolls paid during [the] about three weeks, paid in October, 1923, would that amount be about an average of what was collected during the time that this work was going on?

A. I would say that it would be over an average.

Q. Then they were doing more crossings and haulings then than the average?

A. That is when they were putting the pipe across the river.

Q. And were they hauling men across the river at the same time in those trucks?

A. Yes, sir.

Q. How much above the average crossing during this time from September until the next January or February would be the average in your opinion, per month of the tolls?

A. That would be—I couldn't hardly tell that, Mr. Moore, because as I tell you, the man that worked on the line lots of [time] they had paid their own toll, they had their own

cars and there would from 4 to 6 and 8 men come out in a car and they would pay their own toll. They would go from both sides of the river.

[fol. 123] Q. This you have given is what the company paid and a number of extra laborers worked on the line that would come on the line and pay their own [polls] in addition?

A. Yes, sir.

Q. Now give, in your opinion, in your own words your opinion of what advantage you think that good road is or was to the pipe line company if it was an advantage?

A. I would say that it lessened the expense at least half in hauling that pipe out.

Q. And what in reference to getting their laborers there?

A. It would be the same thing.

Q. Have you ever had any experience in running a boarding camp to keep laborers in?

A. Just in a limited way.

Q. Could you make any money or break even running a boarding camp?

A. Never did.

Q. Is it cheaper if you can get laborers without boarding them?

A. I would always rather they would board themselves.

Cross-examination.

By Mr. Arnold:

Q. Were these vehicles that you have referred to, were they all carrying pipe across the bridge into Little River County and beyond, or were they coming this way?

A. Both ways, Mr. Arnold.

Q. Bringing pipe into Miller County and bringing pipe out of the County?

A. Yes, sir.

Q. What was the reason they didn't swap pipe? Why didn't they swap pipe and be done with it?

A. My understanding was the pipe that they hauled from the north was the old line that they took up.

Q. What did they do with it? They brought it into Miller County?

A. Yes, sir.

Q. And came this way with it?
A. Yes, sir.
Q. You did not keep up with it after that?
A. I know, however, it went across the river.
Q. Into Little River County?
A. Yes, sir.
Q. And they were constructing some lines beyond there?
A. Yes, sir.
Q. Mr. Sanderson, you were one of the bridge commissioners?
A. No, sir.
Q. What connection have you with the bridge commissioners?
A. I am toll collector for the district.
Q. I thought you were one of the commissioners?
A. I was up to the time I took this job as collector, I resigned though.
[fol. 124] Q. This bridge was built under the improvement district plan?
A. Yes sir.
Q. And to help pay that out people who go across there pay about 50¢ for an auto?
A. Fifty cents for an automobile.
Q. And everybody pays that?
A. Yes, sir.
Q. And they pay it because they have the advantage of the bridge?
A. Everyone pays that much toll, yes, sir.
Q. And these people who were hauling this pipe line over into Little River County and beyond, they were paying just like anybody else to pay the bridge out?
A. No, sir, they wasn't paying to pay the bridge out, they were paying for the convenience they got.
Q. They paid the toll just the same as anybody?
A. Yes, sir.
Q. They were paying it just like anybody else?
A. Paying it because it was the law for everybody that crossed over it.
Q. If Mr. Moore went across he would pay?
A. He paid.
Q. And the pipe lines would have to do the same thing?
A. Yes, sir.

Q. This money went to pay out the bridge, didn't it?

A. Yes, sir.

Q. It was going to pay out that improvement district tax by reason of that?

A. Yes, sir.

Q. Now, in regard to the vehicles, after they got on the bridge, did you notice whether or not they had a tag on them showing that they had paid their taxes to go on the road and to run them on the road?

A. Most of the cars had license tags on them. The wagons never had any tags.

Q. They are not required to do it?

A. No, sir.

Q. Well, everybody is treated alike on that score, so far as you know?

A. Yes, sir.

Q. And these folks were paying their taxes to let their autos run on the road just like the balance of us?

A. So far as I know.

Q. Now then, this pipe that was carried from Mandeville, why should they go to Mandeville to get pipe when they could get it off the road at Texarkana or Paup Spur, or down at Ashdown, why should they carry that pipe all the way from Mandeville?

A. I couldn't say about that; all that I know is that they crossed the bridge.

Q. You don't know where they went from, do you?

[fol. 125] A. No, sir, I do not.

Q. It was not pipe then, that was brought in here to be used in Miller County Highway and Bridge District, the case that we have here before us? It was pipe that was going to be used somewhere else beyond the river?

A. It was pipe that they used in building the line beyond the river.

Q. They did cross the bridge so it was not the pipe that you have been talking about that was used in the Miller County Highway and Bridge District?

A. No, but as I stated, the pipe that was hauled out over the highway and dumped, that was dumped off in Miller County and was used in Miller County District.

Q. That old pipe?

A. No, that was new pipe.

Q. Did they take up some new pipe and bring it over here?

A. No, sir, I said the pipe that came from the north side of the river was old pipe that they had taken up and were hauling back this way.

Q. Do you say that they took up that old pipe over there and brought it over here to use in the construction of this line?

A. Yes, sir.

Q. How do you know that these trucks came from Mandeville?

A. I know that they came out over that road.

Q. Now their construction force was working on either side of the river?

A. Both sides.

Q. And wasn't this period that you have given, wasn't that while they were putting in that river crossing?

A. Oh, no, they were putting in a line on both sides of the river.

Q. Just simply because they crossed on that road did not mean they travelled on the road?

A. I could see them a mile and a half down the highway. As far as I know they hauled it out on wagons.

Q. You mean to say they took it over on trucks and reloaded it on wagons?

A. That is what they did.

Q. You say they were saving half the cost of it if they had to take it over and dump it and reload it on wagons, how can you say?

A. Just simply because they could make so many more loads with a truck.

Q. Didn't they have to load that many more, and if they did not put it on wagons they would not have to load it but once?

A. That is true.

Q. How can you say it would reduce the cost?

A. They would haul four or five joints of pipe on a wagon where they would haul 12 to 15 on a truck.

[fol. 126] Q. They would take that as far as they could and then re-load it on wagons?

A. They had wagons that was distributing that pipe along the line while they were working.

Q. It cost a good deal to run a wagon?
A. Yes, sir.
Q. What does it cost?
A. I couldn't say.
Q. You don't know whether they have to spend as much for mules and wagons as you do for a truck?
A. No, sir.
Q. Have you had any experience in pipe line construction?
A. No, sir.
Q. What you have testified here is just from your observation?
A. Just from general knowledge.
Q. Have you ever had any experience in hauling anything by truck and knowing the cost of it?
A. Very little.
Q. If a man comes along there with a load or team, he pays the price on his load?
A. He does.
Q. He pays the regular fee prescribed by law to go across that bridge?
A. He does.

Redirect examination.

By Mr. Moore:

Q. You have had a good deal of experience in your lifetime in hauling different kinds of articles all the way from cotton up to logs and lumber?
A. Yes, sir.
Q. Do you know you can haul a heap bigger load over a hard surface road than over an ordinary dirt road?
A. Yes, sir.
Q. That is just common sense that anybody learns?
A. Yes, sir.
Q. There is a telephone at your office at the bridge?
A. Yes, sir.
Q. They asked you how you knew that these parties came from Mandeville. Do those various parties crossing ever use that telephone to call up Mandeville?
A. They did.
Q. Did they use it occasionally?

A. Not very many times. They had cars and trucks going nearly all the time.

Q. You mentioned that you can see that road nearly a mile and a half from your office at the bridge. Could you not see whether those trucks turned to left and therefore went to Mandeville that way, or whether they turned to the right?

A. They turned east and went towards Mandeville.

Q. You saw that from your office at the bridge?

[fol. 127] A. I did, yes, sir.

Q. You have mentioned that this old pipe was hauled into Miller County and that new pipe to be laid was hauled from towards Mandeville over the bridge into Little River County?

A. Yes, sir.

Q. What kind of road is it from the bridge to Ogden?

A. Dirt road.

Q. What is the character of that road when heavy hauling is over it?

A. In the winter time it gets very nearly impassable.

Q. Then which would have been the cheapest, to haul from Paup Spur over the bridge over this hard surface road, or to have hauled pipe from Ogden, a short distance over on that dirt road?

A. For a short distance on the north side of the road it would have been cheaper to have hauled it from the railroad at Paup Spur or Mandeville than to have hauled it from Ogden.

Q. Isn't that the reason?

A. I suppose so.

Q. Anyway, regardless of the reason, you do know that they hauled that new pipe from Mandeville over the river into Little River County, and where they picked up the old pipe they hauled it into Miller County?

A. I do. I suppose it went towards Mandeville.

Q. It was going towards Mandeville as far as you could see it?

A. Yes, sir.

April 22, 1925, 8:30 A. M., Court met pursuant to adjournment.

Mr. Arnold: If Your Honor please, in the examination in testimony in chief we introduce the map that we had yesterday. It is a verifying map and complete within itself except two or three respects with reference to one or two of these roads that he could not get except from the records of the road district, no public record of it, but I want to introduce it as it covers every material point that the map would affect, so far as this case is concerned.

The Court: What are the material points?

Mr. Arnold: With reference to the location of the pipe line and these roads that are in proximity, I want to introduce that by Mr. Fulton as soon as he comes in.

The Court: That was the map that was referred to by the engineer in chief?

[fol. 128] Mr. Moore: If Mr. Arnold will just wait, as soon as Mr. Christian comes I am going to introduce a map which is in more detail than that.

Mr. Arnold: I do not consider it so, Your Honor.

The Court: The point is whether it is going to reach any issue that is before the Court.

Mr. Arnold: It is a more complete map so that by looking at it you will see just what is involved with reference to the location of the pipe lines and road, and we want to complete our evidence in chief. What they shall introduce, I do not know. We are offering this map which was identified yesterday.

The Court: Well, the fact that there may be two maps, I do not know that there will be any objection.

Mr. Moore: I can't object to it.

The Court: All right, it will be received.

D. B. Owen, a witness sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Moore:

Q. What is your name and residence?

A. D. B. Owen, Texarkana, Arkansas.

Q. Were you living at Texarkana during the months of June, July and August of the year 1921?

A. Yes.

W. B. FULTON, being recalled, testified on behalf of the plaintiff as follows:

The Court: The map will be received in evidence.

Q. Has anything been added to this?

A. On road by the yellow line.

Q. Mr. Fulton, does it show the bridge?

A. Yes, sir.

Q. Will you mark the word bridge?

A. The bridge is shown in the regular manner.

D. B. OWEN, being recalled, testified as follows:

Q. For how many months did you say you worked for the Prairie Pipe Line Company?

A. During the summer of 1921, I think it was, about there, two and a half to three months.

Q. What position did you occupy with them?

A. I was time-keeper.

[fol. 129] Q. Did you also look after the unloading or checking of materials?

A. Part of the time, yes, sir.

Q. What was the company doing during 1921?

A. They were putting in a loop from Ogden across Red River to the Junction and the good road between Paup Spur and Index, they were putting in a line there to take the place of old No. 1, which was the fartherest line east.

Q. For what length of time approximately were they engaged in this?

A. I think it was about 2½ or 3 months.

Q. What months of the year were those?

A. It started in June and in July and in part of August.

Q. During that time approximately how many men were engaged in the work?

A. Well, I don't remember the lowest number; of course it ran up, at one time I think I had about 85 or 90, was the largest number I had at any time.

Q. Where did those men live while on the work?

A. Most of them had residences in Texarkana and scattered around over the country. Mr. Hillford was superintendent, head of the job, and he tried to work local people as much as he could. That was his policy at all times with the Prairie Pipe Line Company.

Q. How did those men come to their work, that time, by what means?

A. Automobiles and trucks, mostly.

Q. Where did those automobiles and trucks principally come from?

A. Great many of them were from Texarkana.

Q. Did the Company furnish the means of conveyance to many of those men?

A. Part of them, yes, sir, but one or two trucks all the time of their own, or hired for the occasion.

Q. What distance is it from Texarkana to the point where this work was in progress?

A. Well, it varied from 10 to 15 miles, I should say.

Q. What roads were used in going from Texarkana to the work?

A. The State Line road and by the way of Mandeville and Paup Spur, both places.

Q. Those are parts of the improved road of the Miller County highway system?

A. They are hard surface roads.

[fol. 130] Q. Have concrete bridges and gravel over the road?

A. Yes, sir.

Q. Where in Texarkana did the men collect and load themselves on those trucks to go to work, if you know?

A. Well, those who rode on the Company trucks would meet down by the State National Bank, usually the trucks would come by the box factory and on up State line, and they would load on there. And others had their own cars. Some of the workmen owned their cars and they would haul out a truck load. They would pay so much a day per trip.

Q. Did the Company pay for those trips that were made?

A. Not the private conveyances.

Q. They furnished their own trucks to haul them?

A. Yes, some of them, when they had their own trucks they would carry the men for nothing.

Q. What other materials or supplies were hauled from Texarkana out on to the work?

A. I don't remember much that was hauled from Texarkana.

Q. Was there any ice deliveries?

A. Oh, yes, ice was hauled out daily while we were at work, one of the company trucks would haul out the ice, or one that we employed for that purpose.

Q. What character of material was used in doing this work?

A. Well, there was pipe, 8-inch pipe, and then in the river crossing between the levees we had what was known as clamps, those heavier pieces of iron, I guess they would weigh 400 pounds to put around the pipe and hold it in the ground in case it should be washed out.

Q. Were any welding tools of the materials used?

A. Yes, in the river crossing.

Q. At what railroad crossing were those clamps and pipe and other materials unloaded?

A. I think the most of it was unloaded at Mandeville, that is my recollection. Some of it may have been at Texarkana. There was some hauling from both places.

Q. Was the pipe itself unloaded largely at Paup Spur?

A. I meant Paup Spur.

Q. You meant Paup Spur when you said Mandeville?

A. I think all the pipe from the river out to the Junction, right close to two miles, was unloaded at Paup Spur; all that went in the ground on this side of the river.

Q. About how many cars of pipe were unloaded there?

A. I do not remember; it seems to me it must have been 12 or 15; I do not remember exactly. Just enough what went in the ground for the two miles of pipe.

[fol. 131] Q. And also the pipe for the river crossing?

A. No, that was unloaded at Ogden, is my recollection about that.

Q. Were the river clamps unloaded at Paup Spur, those heavier clamps that you speak of?

A. That is my recollection, yes, sir.

Q. Now the other pipe that you mentioned that you think was unloaded at Ogden, was any of that hauled back across the bridge to this side?

A. Very little, may have been one or two joints. We unloaded at Ogden, being the other side of the river, and at Paup Spur on this side, to avoid the toll.

Q. After that pipe was unloaded how was it hauled out for distribution?

A. Well, wagons and trucks, mostly trucks, I think.

Q. When those trucks hauled it out where did they unload the pipe? at what distributing point?

A. We had one distributing point on the side of the road between Paup Spur and Index. I don't remember unless I could indicate it by a little club house that was along by the side of the road. That was to be distributed through the woods and along that section.

Q. That club house is something more than half way as you go from Paup Spur to the bridge, is it?

A. Yes.

Q. Where was the other distributing point?

A. We had another one down by the side of the levee, right close to the river, below the bridge, east of the bridge.

Q. Were those distributing points both immediately adjacent to this hard surface gravelled road?

A. Well, one was, and the one by the side of the levee was probably a half mile or three quarters off the road, but they would go around the road to the bridge and then down by the side of the levee.

Q. Now after that pipe was unloaded at those distributing points, did the trucks then,—how was it taken to the place where it was put in the ground?

A. Distributed with wagons and teams.

Q. Do you know why the trucks did not go right to the distributing points themselves?

A. Well, it was a little rough for the trucks to go in there and probably the ground was too soft, some of it through the woods.

Q. It was over roads that trucks could not go then?

A. Yes.

Q. Over these hard surface roads could trucks carry practically as much pipe as could be loaded on them?

[fol. 132] A. My recollection is they carried on them anywhere from 10 to 15 joints.

Q. Do you know who did the distributing with wagons after the trucks had unloaded it at these two points?

A. No, I remember one man, Charley Bruner. Mr. Baton had some teams on the job for a few days, I don't just remember who they were now.

Q. About how many pipes could a wagon haul over this rough road after you left the wagon road?

A. Three or four joints.

Cross-examination.

By Mr. Arnold:

Q. Mr. Owen, give the date that you were employed by this company?

A. The last time?

Q. Well, about which you have been testifying.

A. That was in 1921. I don't remember the exact date, but it was sometime in June, Mr. Arnold, when I started on this job.

Q. During what period of time, what months was it in 1921, if you remember that you were time keeper?

A. June, July and part of August.

Q. Were you employed by the Prairie Pipe Line Company or Standard Pipe Line Company?

A. Prairie Pipe Line Company.

Q. You were the time-keeper, were you?

A. Yes, sir.

Q. Where was your place, at what place were you performing your work?

A. Well, out on the line, I would go out every morning with some of the trucks or automobiles and then come back in the evening some time and walk to the office, if I got back in time, and work for awhile.

Q. From what point to what point was this new line laid?

A. From Ogden across the river to what was called the junction of the two lines, right by the side of the good roads between Paup Spur and Index.

Q. Was it on the north side of the river or the south side that this work was done?

A. Both.

Q. How much of it was south of the river in the Miller Levee District?

A. About two miles is my recollection.

Q. How much was south of the river in Miller County Highway and Bridge District?

[fol. 133] A. Well, if you will tell me what territory embraces that, I can tell you, but I am not acquainted with the boundaries of the highway district.

Q. Well, do you know where the pipe line crosses the Red River?

A. Yes.

Q. Do you know which is the south bank of Red River?

A. Yes.

Q Taking that as a starting point, how much of this work was done while you were timekeeper along a line extending south of Red River, about two miles?

A. It seems to me it was a little bit more.

Q. This side of the river?

A. Yes, sir.

Q. How long did it take to lay that two miles of pipe?

A. Well, I think we were working at it 30 days, off and on, it seems like we were. We did not have much of the crew for the stringing; most of our crew came after the pipe commenced to be laid.

Q. What is your understanding of the meaning of stringing the pipe?

A. Laying it along the right-of-way.

Q. Does that include the hauling?

A. Yes, I think it would, yes, sir.

Q. Was that a single line of pipe that you refer to?

A. Yes, just one line of pipe laid at that time.

Q. Was it laid in place of an old pipe, or was it a new pipe?

A. It was new pipe and new location.

Q. What is the distance from Mandeville to this clubhouse where the pipes were unloaded?

A. I would judge it would be about 6 miles, 5 or 6, I don't remember. About 5 or 6 miles would be my judgment.

Q. The pipe itself that you have referred to, and materials, that—from Mandeville to the clubhouse.

A. No, from Fouke Spur.

Q. Well, how far was it from Fouke Spur to this place where the pipe was unloaded?

A. Four or five miles I think.

Q. Fouke Spur is between Mandeville and Index?

A. Yes.

Q. Now Mr. Owens, the road from Mandeville by Fouke Spur around to Index, that is one of the improved roads?

A. Hard surfaced road.

Q. That road leads along the margin of the river bottoms, the west side of Red river in Miller County, margin of this bottom next to the river, near the river?

[fol. 134] A. Quite a distance from the river I think, until it gets around close to Index.

Q. Well, what I would like to know, that it is the road along the west side of this Miller County Highway and Bridge District?

A. It is not, no sir.

Q. To Texarkana?

A. Oh no, it is nearer the river than it is Texarkana I would judge.

Q. Now the other road that leads from Texarkana to Index, that is along state line?

A. Yes.

Q. And it is an improved road?

A. Yes.

Q. And there is a road going from Texarkana to Mandeville, is there not?

A. Yes, sir.

Q. And it is also improved?

A. Yes.

Q. Now state whether or not these roads have been there a long time as public roads before this improvement was made upon the roads?

A. Before they were hard surfaced you mean?

Q. Yes?

A. Well, I know the Mandeville road was a public road some time before the improvement.

Q. Don't you know that it is an old road?

A. That is my recollection.

Q. Don't you know that is an old road from Texarkana to Index for years?

A. I don't know whether I ever went,—yes, I did, I have been over it.

Q. What about that dirt road that went over the other way, how do those people get in there?

A. I don't know Mr. Arnold, I was never through that part of the country before the roads were put down.

Q. Now there is a railroad running from Texarkana to Index?

A. Yes.

Q. And it also extends beyond, the Kansas City Southern Railroad by Ogden and Ashdown and on up that way?

A. Yes.

Q. Now this pipe that you refer to that was laid beyond the river on the north side of the river, where was that unloaded?

A. At Ogden.

Q. Now with reference to the road from Ogden down to the bridge, is that a hard surfaced road, or is it a very poor road?

A. It is a very poor road.

Q. The pipes were hauled along that road for distribution?

A. Yes.

Q. And they were laid north of the river?

[fol. 135] A. Yes, sir.

Q. And those pipes that were in the two mile extension, they were unloaded at Mandeville and carried around Fouke Spur to a point near where they were needed?

A. Yes.

Q. And then when they were put there, they were subsequently put on wagons and carried along the right-of-way and strung along and put down. Is that a fact?

A. That is a fact.

Q. And you were the timekeeper?

A. Yes.

Q. For about three months?

A. For about three months.

Q. Do you mean to say it took three months to put down those pipes, the two miles?

A. We were not putting down all the time I was working for them. From the time the job started they began to

accumulate material. I was time keeper while the job went on, but that wasn't all the duties that I performed.

Q. It did not take you all of the time?

A. No.

Q. Nor it did not take the men all that time to put down the pipe?

A. No, it took about two months is my recollection, by the time the job was completed.

Q. Was the new line laid along the right-of-way of this company, or was it laid in a different place?

A. In a different place.

Q. How far from this original line?

A. Well, it didn't go near the original line. From Ogden the original line, that is old what they call No. 1 line across the Red river to four miles on that, it is east of Index and the line crossed right at Index. Instead of going east from Ogden as the old line originally went, it came directly south across the river at Index.

Q. Was the old line abandoned?

A. Yes, sir.

Q. How much mileage was there of this old line that was abandoned?

A. I don't know Mr. Arnold.

Q. Was that taken up?

A. I was told so; I wasn't on the job.

Q. Was it an old pipe line?

A. The first one that was put in.

Q. That was abandoned and this new line was put down below there east of it?

A. West of it.

Q. West of it?

A. Yes, west of it.

Q. That would throw it over in Texas?

A. No, sir.

[fol. 136] Mr. Black:

Q. Assuming that there were no good roads in the territory, or assuming that this line was laid prior to the building of hard surfaced roads, where, in your opinion, would the company have unloaded the material with the reference to the places it did unload it at the time the line was built?

A. I imagine they would have unloaded it on the Kansas

City Southern, Mr. Black, I don't know that would have been my opinion about it. There is a switch between here and Index, at that place they did unload a lot of material once on another line across from Red river before the hard roads were put in.

Q. Is that as far from the line as Fouke Spur?

A. No, it isn't quite so far.

Q. Now this new line that you laid in 1921, how much total mileage is that line?

A. Right around two miles.

Q. Two miles south of the river and a mile north of the river?

A. Yes, sir.

Q. Now I do not know whether I understood you in your examination by Mr. Arnold, how long did it take to construct that two miles south of the river?

A. I don't remember Mr. Black, they were unloading and hauling there I imagine for two or three weeks. We did not have much of a force.

Q. Was that a continuous proceeding?

A. No, some days it would rain and the men would not work, and things like that. We were at it about three weeks stringing the pipes, is my recollection.

Redirect examination.

By Mr. Moore:

Q. Who was the man in charge of this work representing Prairie Pipe Line Company?

A. J. B. Hillford.

Q. He was in complete charge of everything?

A. Yes.

Q. You took your orders from him, and all the men did?

A. Yes.

Q. You have mentioned that you think if there had been no good roads that this would have been unloaded on the Kansas City Southern at Watley?

A. Yes.

Q. About how far east from Watley to Index?

A. It is right about five miles I think. I don't know the exact distance.

[fol. 137] C. S. CHRISTIAN, a witness sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Moore:

Q. What is your name?
A. C. S. Christian.
Q. And your residence is Texarkana?
A. Yes, sir.
Q. And has been for many years?
A. Fourteen years.
Q. What is your profession?
A. Civil engineer.
Q. You were the engineer when the Miller Levee District was built and are still its engineer?
A. Yes, sir.
Q. Were you jointly with Lund & Hill of Little Rock the engineers who laid out and supervised the building of the good road in Miller County Bridge and Highway District?
A. I was.
Q. During what years were those roads built?
A. I tihnk in 1917 and 1918.
Q. Completed within the year 1918?
A. As I remember it. I would not be positive, but I believe that is right.
Q. I show you here a blue print and will ask you if that is a map of Miller County showing the boundaries of the Miller County Highway and Bridge District?
A. Yes, the boundary line of the Miller County Highway and Bridge District is shown in yellow and the location of the various roads is shown in red pencil.

The Court: That means the improved roads of the district?
A. Yes, sir, those are the improved roads in the districts.

Q. Go ahead. How is the pipe line shown?
A. The pipe line is shown in dark red and noted on it Prairie Pipe Line. It does not show the line that was taken out. The line that was taken out was the line from the junction in Section 22 going due north across Red River, that line was abandoned.

Q. That line shown going due north was in 1920 and has since been abandoned?

A. Yes, sir.

Q. And these other lines crossing the junction across Red river at Section 8, was a line built to take the place of the abandoned line. Since the additional lines have been laid [since then], and the line laid to take the place of the abandoned lines has since been abandoned and all of the lines through Section 7 across Red river just east of the bridge.

[fol. 138] Q. Since 1920 both of those lines from the junction down have been abandoned and have been relaid up close to where the bridge is?

A. Yes, sir.

Q. Now at the point where the river is crossed you show a marking in red with the word bridge, is that the location?

A. That is the location of the bridge across Red river.

Q. Show which is the location of the Kansas City Southern?

A. The Kansas City Southern Railroad location is marked on the map. It lays wholly in Texas.

Q. How is that marked?

A. K. C. S. R. R.

Q. Show the location of the levee and the boundary of the Hill Line?

A. The location between the Hills and the levee district.

Q. How is that marked.

A. It is marked with a rather broken line designating the hills.

Q. Show the location of the Missouri Pacific Railroad formerly the St. Louis Iron Mountain Southern?

A. It runs northeast from Texarkana through Mandeville and Paup Spur.

Q. That parallels the hard surfaced road to a point within two or three miles of Fulton, does it?

A. Yes, they are practically parallel all the way.

Q. Now examine the map and see what is the furthest point within the district where the pipe line is away from the good roads?

A. Between a mile and a half and two miles, less than two miles and probably a little over a mile and a half.

Q. At how many places do the good roads cross the pipe line within the district?

A. Four.

Q. And they reach within a mile and a half at the farthest point of every section of the pipe line?

A. Probably a little over a mile and a half; between a mile and a half and two miles.

Q. At the time work was commenced on these hard surfaced roads, what was the character of soil from Texarkana through Mandeville down through the bottoms, on the road leading from Texarkana to Paup Spur?

A. Well, many places it was very sandy and other places where a road had been there a long time the natural erosion had washed the tops all away and had gotten down to a hard clay.

Q. From a point where the bottom is reached to Paup Spur and then turn to the left on to Index, what is the character of the soil?

[fol. 139] A. Well, practically all stiff buckshot.

Q. From Texarkana going by way of Paup Spur to Index was there a road all the way when work was commenced on this hard surfaced road?

A. No, there was road from Texarkana to Paup Spur and then there was about a mile, going out to what is known as the Car Bend place. From that point to Index there was no road at all.

Q. That is, neither a county road or an open neighborhood road?

A. No, there was no roads in there then.

The Court: You say there was no road from Paup Spur to Index?

A. No, sir; that was opened by the Highway District.

Q. When the Highway District went in there to open it, was it through a wood country or through open country that was being farmed?

A. Well, a little of it was through open country but the greater portion of it was through woods. The District petitioned for the County Judge to open that road.

Q. It had to be opened by the County Judge so it could be built?

A. Yes, sir.

Q. When you started work on that road was there any way that you could get through there by automobile?

A. No, sir, could scarcely get through with a horse.

Q. Could you use wagons and horses in going through there?

A. No, you couldn't get through there except on horse back, that was the only way we could get through it.

Q. On the roads that were county roads from Texarkana to Paup Spur and a mile on toward Car Bend, what was the character of the road as to the surface or the condition for the purposes of vehicular traffic?

A. Well, the road was in rather bad condition. There were times when it was [impass*ible*], you couldn't get over it at all. It was just an ordinary country road, had very little work and very little improvements ever put on it.

The Court: What road is that?

A. From Texarkana to Mandeville and Paup Spur.

Q. What was the condition of the bridges on that part that was a county road when you commenced work, what kind of bridges and what conditions were they in?

[fol. 140] A. Most of them were wooden and in bad condition. There was one steel bridge over McKinney Bayou, was the only permanent bridge, and its floor was bad.

Q. With the condition that that road was in at that time could an automobile, trucks and automobiles have been used for hauling material or men? I am speaking of the county road?

A. Well, there might have been a time during the very dry season when that might have been used to some extent, but they couldn't have hauled any loads to have mentioned.

Q. It had only a natural dirt surface?

A. That was all.

Q. What would have been the effect in a dry season of continuous hauling of heavy loads by trucks?

A. Well, it would have cut up so badly until it would have been practically [impass*ible*].

Q. Were there any creeks or ravines or depressions between where the road now is and county road and Index over the line of this hard surfaced road that has since been built through?

A. Yes, we crossed—there were several depressions where we had to put in culverts and then we crossed Cedar Creek where we put in a short bridge.

Q. Before the bridges were put over this was it possible to cross the depression of Cedar Creek with wagons or trucks?

A. No, you could cross it during the dry season close to the river, but that was the only place you could cross it.

Q. What was the character of the road, if you know, between the bridge at Index and Ogden during the years 1922, 1923 and 1924 as to being improved or unimproved?

A. Well, it was unimproved. They have never had an improved road.

Q. It is still unimproved?

A. Yes.

Q. That is across the river, from the river until you reach the town of Ogden?

A. They have graded a little in the last couple of years, but they have never had an improved road.

Q. You still have charge of these sections of it that have not been taken over by the State Highway?

A. Yes, sir.

Q. Does that give you occasion to use this road in going out over them making examinations?

A. Yes, sir.

Q. Do you know whether a pipe line company during the year 1921 hauled any men and materials over these roads for work on that pipe line?

[fol. 141] A. I can't definitely state the time, but I have seen them any number of times hauling that material out from Paup Spur over the roads.

Q. You know do you that during the year 1923, and possibly part of 1924, they laid additional lines of pipe in the Miller Levee District?

A. Yes, they unloaded a lot of their pipe at Paup Spur, it was a block from where we unloaded gravel there.

Q. Used the same side tracks that you used for gravel for repair work?

A. They used the side track that the Highway District built and paid for and one that they had always used.

Q. They had the benefit of that side track for unloading their material at Paup Spur?

A. Yes, sir.

Q. For what length of time, if you know, were they doing this work and hauling men and materials over the road?

A. I couldn't state the definite time Mr. Moore, I don't know.

Q. You as an engineer, or have you as an engineer, had experience in moving heavy materials of various kinds?

A. Yes, sir.

Q. In your opinion is it or is it not an advantage where you have heavy materials to move to have hard surfaced road over which you can move these materials rather than an ordinary dirt road?

A. Well, it is a decided advantage to have hard surfaced road to haul over.

Q. Explain wherein that advantage lies?

A. Well, you can increase your load limit and you can get a higher speed so that you reduce your handling cost. We have a case right now at hand where a Hutcheson machine has just finished up down at the Dooley Ferry road and he has attempted to truck over to the end of the Dooley Ferry road so that he can come out with trucks and load them at the end of the road and bring them on in town, otherwise he would have to haul it over in wagons.

Q. From your knowledge of engineering and your experience doing work, would you consider that any advantage had accrued to the pipe line company from being able to move its men and material for repair and work over this line of road between Texarkana and Index?

A. I think it would be a decided advantage to them.

Q. What is the character of that road as built by the Miller County Highway and Bridge District insofar as the bridges are concerned and the surface material. Just describe what kind of road has been built?

[fol. 142] A. The culverts are of concrete. There are a few bridges that have been built that have concrete abutments, but they have wood sills, others have steel stringers and with a wood floor attached. On the wooden bridges they have 13 lines three by fourteen with the stringers in them making them of ample strength. And there was 8 inches gravel surface placed on the road 12 feet wide.

Q. And what is the condition of that road insofar as the amount of heavy trucks with heavy loads is concerned, what number of tons or pounds can safely be carried over that road in its present condition?

A. You mean without disturbing the surface?

Q. No; I am not speaking of what the road will hold up, so you can haul them without bogging or breaking down, and that the bridges will stand?

A. Well, those bridges will take a 15 ton load.

Q. Will the road take it?

A. Yes, the road will take it, if they have anything like the right kind of tire width.

Q. Before this road was built under the conditions you found it when you commenced work what size of load could have been taken over that road safely?

A. Understand there was no road from Index to Paup Spur.

Q. I am not speaking of what was there?

A. It depends on the season of the year. There were seasons of the year you could not haul an empty wagon over it. An ordinary farm wagon with 2,500 pounds would have been a pretty good load.

Q. Now the road in its present condition, what is the effect *of* [a] twelve hour rain would have as to hauling on the day following?

A. It does not affect it any.

Q. Under the condition of the road before the hard surface was put on, what would have been the effect on heavy wagons or trucks for hauling purpose after a twelve hour rain?

A. I couldn't have hauled it. You might have hauled three or four hours and then you would quit.

Q. It would have been impossible to have hauled at all?

A. Yes.

Q. As to the road from the junction going toward Car Bend and Index, you say there was no road of any kind?

A. No, sir.

Q. What was the distance of the territory between Index back to where there was no road of any kind?

A. 6½ miles.

[fol. 143] Q. By referring to your map, what is the distance from the bridge at Index to Whatley, the station on the Kansas City Southern?

A. 5 miles.

The Court: Where is Whatley?

A. It is on the Kansas City Southern just at the edge of the hills between here and Index.

Q. That is a spur track used only in loading and unloading freight?

A. Yes, sir.

Q. Since you have been in Texarkana representing the roads and levee districts, have you had at various times had conferences with the manager of the company about crossings that they were to make over the levee, that they were to make with their pipe?

A. I have had crossing over the levee and the road, they just went ahead and cut through without saying anything to anyone. They did not bore under it, they dug through it.

Q. You heard the testimony yesterday about the method of boring through. Don't state what the method might be, but what was actually done when this pipe crossed the lines of road in the Miller County Highway?

A. They just dug a trench across and went on.

Q. That was done in the same method as it was done in the lands on each side of the road?

A. Yes, sir.

Q. Who was the general manager in full charge of the work and of the pipes of this pipe line Company in Miller County, or do you know? Who is now?

A. I don't know.

Mr. Arnold: We object to the question. Mr. Christain was undertaking to say that somebody was general manager and in full charge of the business of this company. He don't show any knowledge of how he thought somebody was in control.

The Court: That is a conclusion. Mr. Christain may state what he knows.

Mr. Moore: He has said he don't know who it is now.

Q. Who was the general manager of the company in charge of the business in Miller County during the year 1921, if you know?

A. Mr. J. B. Hillford was their superintendent, I think they called him.

Q. Did you have any conference with him in reference to matters of interest to the pipe line Company?

A. Yes, sir.

Q. What were those conferences in reference to?

[fol. 144] A. Mr. Hillford and I were very good friends, we talked about different things in connection with it, usually on a business matter, it was the question of the levee crossing.

Q. Then he did see you about getting permission to make various levee crossings for the company?

A. Yes, sir.

Q. Where was his office at the time?

A. It was in the State National Bank Building, I have forgotten the floor it was on. I believe it was on the second floor.

Q. Where did he live at that time?

A. Well, he at one time lived out on Beech street, but he later moved to Mandeville.

Q. That is where the pumping plant of the company is?

A. Yes, sir.

Q. On this map what school district is that part of the pipe line in that is in Miller Levee District in the bottoms?

A. I don't remember Mr. Moore, just what that number is.

Cross-examination.

By Mr. Arnold:

Q. Mr. Christian, you have been living in Miller County since about 1908?

A. Since 1911.

Q. And during that time you have been engineer for various projects, that is, the levee districts, and the road districts and several levee districts, have you not?

A. I have.

Q. Were you here when the original pipe line was laid in 1909?

A. I was not.

Q. You became familiar with the fact however, that there was a line in existence a pipe line across the river running through Miller County at the time you came here?

A. Yes immediately thereafter.

Q. And that subsequently there was another line laid parallel with that about 1915?

A. Well it parallelled it part of the way.

Q. Do you know where they unloaded the pipe and the material from the railroad for the building of the line about 1915, that is the Prairie Pipe Line Company?

A. I couldn't say.

Q. Do you know whether or not they had that material shipped in on the railroad, whether it came by rails to this vicinity, or how it got here?

A. I don't remember anything in connection with any line they laid in 1915.

[fol. 145] Q. Was there a road from Texarkana to Richmond and Ashdown?

A. There was only what is known as the Richmond road, but runs out through Texas.

Q. Well, there is nothing against it on that account?

A. But by the time it gets to the bottom it is about 8 miles or 6 miles west of the state line.

Q. Then in traveling from Texarkana to Ashdown people just had to light out and go through the woods before this road business was put through by you gentlemen? Is that the way you state it?

A. They could go by train.

Q. Is there any other way?

A. They could go by woods or go by train.

The Court: Was there no state line road at that time?

A. No, sir.

Q. When was that constructed?

A. The State Line Road was built in 1917 when the Miller County Highway and Bridge District was formed. Prior to that time Bowie County about 1914 or 1915 took the old Kansas City Southern dump that had been abandoned through the bottoms and built bridges at various openings and used that out to Index. That was the first road that went to Index.

Q. When was that abandoned by the Kansas City Southern?

A. It was prior to the time that I came here.

Q. Was there a ferry across Red river between Miller and Little River County?

A. There was a ferry at Index when the bridge was built out there, but there were times when there wasn't any place to get across the river at all there.

[fol. 146] Q. You knew of no way to get from here ordinarily from Texarkana over to Richmond in that part of the country?

A. Yes, you could go by train, or you could by Richmond and they had a ferry over there on the river, and there was a ferry occasionally in operation at Index.

Q. It makes no difference whether there was a ferry at Index or anywhere else. I want to know if there was a ferry kept up whereby people could travel from here to Little River County?

A. There were any number of ferries, Mr. Arnold, on the river.

Q. Then there was a ferry or more down there?

A. Yes.

Q. Now then, didn't people go from Texarkana to Fulton and from Fulton to Texarkana?

A. There was the old Fulton road that they could travel and a ferry was at Fulton, or they could go by train.

Q. There is a ferry still at Fulton, isn't there?

A. Yes, sir.

Q. Was that a public road from Texarkana to Fulton?

A. Yes. It wasn't located, however, where the present road is located.

Q. Well, the present road is located on the north side of the Iron Mountain Railroad?

A. Yes, sir.

Q. Where was the other?

A. It was on the north side of the railroad also, but it often was as much as a mile and a half away from the railroad.

Q. Well, there was a public road, wasn't there, from Texarkana to Fulton?

A. Yes.

Q. Now then, was there any other public road in this district?

A. Yes, Dooley Ferry road was a public road.

Q. Where did that road go to?

A. It went to what was known as Dooley Ferry from Texarkana.

Q. Did that go by Genoa?

A. No, it went out east 9th street and about a mile outside the city limits turned to the northeast and went out Dooley Ferry.

Q. Where is Dooley Ferry with reference to Fulton?
A. It is about 10 miles on an air line down the river.
Q. That road did not go to Genoa?
A. No.
Q. Well, was there any other public road in this district?
A. Yes, Genoa road.
[fol. 147] Q. How much mileage was there in that Genoa road within the district?
A. About 4½ miles, as I remember it.
Q. That runs south of Texarkana.
A. Southeast, almost due east.
Q. Was there any other public road in the district?
A. Oh, I presume there are numbers of roads that have been declared public roads at that time.
Q. It was not a jungle, entirely?
A. No.
Q. There were roads for people to travel around on before Miller County highway was constructed?
A. Yes, most of them were in the hills, however.
Q. Well, in what possible way was it that they could have hauled pipe in 1915 to have got out to a place where they laid the pipe line of this company?
A. They could probably have cut out a road of their own and hauled it.
Q. Was there no road that led in the vicinity of where the pipe line was laid from Red River to Mandeville?
A. Paup Spur road ran out about a mile and a half. They could have gone out the river and then by cutting through some of the farms could have gotten by to their line.
Q. Was there any cultivation in Red River bottoms between the hills and Texarkana, north and east in farms?
A. Yes.
Q. Well, there were some roads, weren't there?
A. Just farm roads only.
Q. There were public roads, so-called?
A. No, sir, no public road down that river at all.
Q. No public roads leading from Texarkana north or east?
A. There were roads northeast through the district, yes, the Fulton road.
Q. Well, was there any other?
A. The Paup Spur road was a public road, but it only ran out a short distance.

Q. How far?

A. Well, it ran out to the river at what is known as the Car Bend place, about a mile and a half in length, I think, out to the Car Bend place.

Q. Were there farms along in the bottom south and west of the river in this district before it was farmed in the territory?

A. You mean south of the river?

Q. South and west of the river. Were there any farms in there?

A. Yes, there were farms along the river.

Q. And were there not hill farms between Texarkana and the river bottom?

A. Yes.

[fol. 148] Q. Well, the people had some way of getting around in this district, didn't they, before these roads were formed?

A. Yes.

Q. By what means did they get around?

A. I stated awhile ago there were any number of public roads in the hills.

Q. In this district?

A. Yes.

Q. But you know of no public roads in the bottoms?

A. They were not there.

Q. There were roads of some kind that these people used?

A. Yes.

Q. How did they get to their farms?

A. A lot of them just took through the woods.

Q. Now, Mr. Christian, with reference to these roads, you have called them hard surface roads, I believe, of what material are they composed?

A. Gravel.

Q. Just gravel?

A. Clay bearing gravel.

Q. What was the thickness of this gravel put on these roads?

A. Eight inches.

Q. Isn't it a fact that these roads have been in pretty bad fix and not very good for travel since they were laid there, most of the time?

A. No, that is not true.

Q. What about the roads, have they been perfectly good roads all the time?

A. They have had some terrific traffic on them and there has been some wear.

Q. The Prairie Pipe Line Company tore them up?

A. I did not make that statement.

Q. Well, they have had traffic on them?

A. Yes.

Q. Isn't it a fact that these roads have been almost constantly out of repair from here to Paup Spur and to Index?

A. They have at all times been passable. They have needed some repair.

Q. Haven't they been notoriously out of repair most of the time?

A. No.

Q. Now these roads, will you state to the Court whether or not any of these roads were laid over places where old roads existed before, public roads or good roads, or what not?

A. Yes, some were laid where old roads had existed before.

Q. Just state where, which of these?

A. Well, from Texarkana to Mandeville, they followed practically the old road location out there.

Q. Well, from Mandeville to Paup Spur?

[fol. 149] A. There were changes made in the location.

Q. The general direction was the same, wasn't it?

A. Yes.

Q. Anywhere else?

A. Well, on east 9th street, some of that is over old location.

Q. That is in the city, isn't it?

A. East 9th street road.

Mr. Moore: I haven't the lease objection from the standpoint of this case, for this matter to continue the rest of the day, but that I can't see the idea of it unless it is to test the knowledge of this witness as to the map that has been introduced and whether it is a true map. I just suggest that if that character of questioning is continued very long it will delay us. It has not any bearing.

The Court: I do not know what the object is.

Mr. Moore: The fact that the road district was a failure, I do not see what effect it could have if it was a legal assessment, it is legal.

Mr. Arnold: I think I will concede the proposition. The point I was attempting to direct my questions to was there were roads before this was laid, and these roads were not of much importance on the whole. That was my understanding. Of course, I may be mistaken. That was my understanding. I haven't been able to get this witness to let it out.

The Court: I guess you will have to give it up as a bad job.

Q. Do you recall any other roads of these improved roads than those that you have mentioned, which followed the line of an old public road?

A. Well, the Genoa road, the Line Valley road and practically all of the roads follow a little bit of some old road.

Q. At places though, you had to vary from the old line and cut through?

A. At some places we varied the location, and in others it was an entirely new road.

Q. Now, Mr. Christian, you may state whether or not these roads were laid out and built with reference to betterment and advantage to give to the Prairie Pipe Line Company?

A. They were given no special consideration.

Q. Do you find that the Prairie Pipe Line Company, or the Standard Pipe Line Company, as it now is, is paralleled by any of these roads that were built by the district?

[fol. 150] A. No, I don't think so.

Q. The roads cross the pipe line right-of-way in one or more places?

A. Four, I believe.

Q. At those crossings, have you had anything to do with the method of construction and the putting the pipe line under the road at all?

A. No, sir.

Q. Now, I believe you say that at no point, if I understood you right, within the district where the pipe line existed at any point has or has not access to one of these public roads within a mile and a half?

A. Between a mile and a half and two miles.

Q. At a point between the roads and the pipe line, is that woods?

A. Not altogether.

Q. Any road there leading from these public roads, any public roads leading from your roads to the pipe line covering this intermediate space of a mile and a half that you have mentioned?

A. There probably are. I do not suppose any one knows all the roads that have been declared public roads in Miller County.

Q. There may be roads at some place where you can reach the pipe line from the old road and there may be some roads intermediate between those places?

A. Yes, there are roads, I have been over them myself, but whether they are public roads or not, I can't state.

Q. There is no right-of-way or roads cut out by the district from your public roads to the pipe line in order to accommodate the pipe line, is there?

A. No, sir.

Q. Now, Mr. Christian, you were asked in the latter part of your examination in chief with reference to school districts, the school districts one or more, located in Miller Levee District No. 2, I will ask you to state what school districts this pipe line runs through inside of Miller County Highway and Bridge District?

A. I am not familiar with the boundary lines of the school districts, Mr. Arnold, unless I had a map I would be unable to tell you.

Q. Would this assessment be of any aid to you to determine that property?

A. Probably would not.

The Court: Mr. Arnold, I would like to ask you what significance that assessment has that calls Mr. Christian's attention to?

Mr. Arnold: There is one feature of it, it is all valued as personal property. That is one feature of it and there was some testimony introduced here with reference to the use of [fol. 151] the roads by the company and also the bridge, as a matter of information. I don't know that it would cut any special figure that this company had been assessed for gen-

eral taxation in the county $572,000 and were paying that tax, we were good tax-payers and were not trying to beat taxes generally.

The Court: What I was trying to get at was whether it served any purpose so far as the assessors were concerned. The act did not require that that be taken into consideration.

Mr. Arnold: The act did not require it but the assessors did follow it. They simply assessed the benefits against this company for the full amount that they had been assessed for taxes.

L. F. French, a witness sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Moore:

Q. What is your name?
A. L. F. French.
Q. Where do you live?
A. Texarkana, Texas.
Q. What is your business?
A. Teaming contractor.
Q. You do work, levee work, and also hauling do you?
A. Yes, sir.
Q. Have wagons and teams that you have used for that purpose?
A. Yes, sir.
Q. How many years have you been in that character of business?
A. Over 20 years, I think.
Q. You formerly lived near — Hill of Lafayette County?
A. Yes, sir.
Q. And then moved to Louisiana?
A. Yes, sir.
Q. Were you in that business in Louisiana?
A. Yes, sir.
Q. How many years have you been in Texarkana?
A. Something over 4½ years.

Q. Were you employed to do hauling for the Prairie Pipe Line Company, doing hauling in the years 1923 and 1924?

A. I was employed by the Standard Pipe Line Company.

Q. It was after the purchase from the Prairie Pipe Line Company by the Standard?

A. Yes, sir.

Q. For what length of time did you work as contractor?

A. Really, I didn't contract that piece of work, I had my teams on by the day.

Q. For what length of time did you work?

[fol. 152] A. I think I commenced the 15th of September and finished about the first of January. I went through from Mandeville to De Queen.

Q. What character of work were you doing?

A. Hauling pipe.

Q. For what length of time about were you hauling in the territory between Mandeville and the river crossing that is in Miller County?

A. I really don't know just when we did cross the river, but it seems to me about 45 days, or 60 days; between a month and a half and two months.

Q. Were you using trucks or mules and wagons?

A. Using mules and wagons.

Q. Where was that pipe unloaded from the railroad?

A. We had some at Mandeville and some at Paup Spur, most of it at Paup Spur.

Q. After the pipe was unloaded at Paup Spur by what means was it hauled out along the roads in this district?

A. I think my teams, in fact I know they did, hauled some of this pipe from Mandeville straight through the line as far as it goes where they wanted to tie the line in from Paup Spur. They hauled some of the pipe from Paup Spur and some from the good road. I don't know how much they hauled from the railroad and how much from the storage pile.

Q. Who hauled that out on the road to what you call the storage pile?

A. The company hauled that themselves with trucks, what was hauled with teams.

Q. Now the teams hauled part of this from the railroad?

A. Yes, sir.

Q. Where the teams hauled it, did you go along the line of the pipe, or did you follow the good roads as far as you could go on the good roads?

A. From Paup Spur I hauled on the good road to where I went off the good road to the pipe line.

Q. For what distance did the company haul from Paup Spur up to the distributing point?

A. I don't think it was more than 3½ miles or 4 to where the line crossed the good road.

Q. Were these pipe unloaded by the side of the good road?

A. Yes, sir.

Q. And then how were they hauled from there until they were distributed?

A. They were hauled with teams up the pipe line and down the pipe line.

[fol. 153] Q. What character of load could you haul with your mules as long as you were on the good road?

A. On that gravel road, or any hard surface ground it is a matter of loading your wagon and not your teams. But in this instance I didn't stay out there and could not tell these wagons that hauled from Paup Spur could carry a load that they had to go to the woods with, and they practically hauled the same load. Of course, on hard road they would haul more.

Q. Then you did not load your wagons to capacity because you were going to leave the hard road and distribute it?

A. Yes, sir.

Q. Could you have hauled more pipe if you were going to stay on the hard surface road?

A. Yes, sir.

Q. What would be the difference?

A. A good deal depends on the class of country you are going through.

Q. I am speaking of what you would haul on the hard road.

A. It is just a matter of what your wagon would hold up.

Q. Just as long as you would not break the wagon down you could haul that?

A. Yes, sir.

Q. After leaving the hard surface road how did you have to load your wagons?

A. I think I pulled from 6 to 8 joints.

Q. Then you could not haul to capacity after you left the road?

A. No, sir.

Q. How did the company do, if you know, in hauling out to this distributing point, did they haul most of that with trucks?

A. I think they hauled it by teams, hauled quite a lot of it from Paup Spur.

Q. Did they distribute any of this pipe along the line after leaving the good road with trucks?

A. I really don't know, Mr. Moore, I don't think so.

Q. Could a truck after leaving the good road go along the pipe line during that time of the year?

A. I don't think so.

Q. From your knowledge gained as a teaming contractor, is it an advantage when you are hauling heavy material such as this pipe, to have hard surface roads rather than dirt roads to haul over?

A. Yes, sir.

Q. If you are taking a contract to haul material would you take into consideration the question of whether it was to be over a hard surface or a dirt road?

A. Yes, sir.

[fol. 154] Q. Then could you afford to haul cheaper over a hard surface road than you could over an ordinary dirt road?

A. Yes, sir.

Cross-examination.

By Mr. Arnold:

Q. Mr. French, from what point did you get the pipe that you hauled?

A. I hauled from Mandeville, some pipe from Mandeville, and some from Paup Spur, and some from where it was unloaded on the highway.

Q. During what time was this hauling done by you?

A. It was in the fall of 1923. I think I commenced about the 15th of September.

Q. And for what length of time?

A. I hauled up until about the first of the year.

Q. First of the year 1924?

A. Yes, sir.

Q. How many teams were you using?

A. I think I had 5 teams on this haul from Mandeville to the river. From Ogden to De Queen I had 6 or 7.

Q. You had the contract?

A. No, sir, my teams were under Mr. Lee's supervision. They were hired by the day.

Q. Who was Mr. Lee?

A. He was the superintendent in charge of construction.

Q. What was the company doing, the Standard Pipe Line Company?

A. They were laying pipe lines, as well as I knew, from Mandeville into De Queen.

Q. One line or two?

A. Two, I think. I am not sure about that. I did not go up and down the line.

Q. You just leased your teams?

A. Yes, sir.

The Court: Did they haul pipe from Mandeville or Paup Spur to De Queen?

A. No, sir, my teams hauled from Mandeville and Paup Spur to the river, and from Ogden back to the river, and from Ogden the other way. And then they had different distributing points on the Kansas City Southern.

Q. This Paup Spur and Mandeville is on the Iron Mountain road, I believe?

A. Yes, sir.

Q. But the railroad running from Texarkana north is the Kansas City Southern?

A. Yes, sir.

Q. They have unloading places at Whatley and Ogden on the Kansas City Southern?

[fol. 155] A. I did not haul any from the Kansas City Southern until I crossed the river.

Q. At what point did you receive the pipe there?

A. Ogden.

Q. How far is that from this bridge?

A. I really don't know. It seems to me like it is about 3 miles. I am not sure.

Q. They have no good road there?

A. No.

Q. From the bridge to Ogden?

A. No.

Q. Now this pile that you hauled in this district, your teams received it at Mandeville and at Paup Spur?

A. Yes, sir.

Q. Was it the two lines of pipe that your team hauled that was laid in this district?

A. Yes, sir.

Q. They had some other teams on?

A. I had teams but there were other teams.

Q. There was no other road that could have been used for hauling this pipe except the so-called hard road?

A. No, sir.

Q. They had to use that to get there at all?

A. Yes, sir.

Q. But now when they got to the right-of-way of the pipe line, didn't they unload some of this pipe?

A. Some of this pipe was unloaded.

Q. Did that have a tendency to lessen the advantage?

A. It shortened the team haul, it made a shorter team haul going up and down the line.

Q. Now if there had been a good road from Mandeville and Paup Spur the wagons would have been loaded, borne the same load all the way through to the point of depositing on the right-of-way?

A. I think so, Mr. Arnold. Now my teams were loaded at Paup Spur to carry a load that they could get through the woods with. I didn't unload any pipe. I loaded for the work for the road, and that is what I left Paup Spur with.

Q. You then had the same load you would have taken if this had been an improved road?

A. Yes, sir.

Q. When you left the good road you did not discharge a part of your load?

A. No, sir.

Q. And so did not take any advantage of your good road?

A. No, sir.

Q. And that applies to all the pipe that was laid in this district on these two lines in 1923?

A. Yes, sir.

Q. Now to have gotten the benefit of the good road in this transportation or the haul, it would have been neces- [fol. 156] sary for that good road to reach to the point where you finally discharged your load?

A. Yes, sir, if the good road would have been parallel the pipe line, of course, I could have hauled more pipe because I would not have gone under the instructions of Mr. Lee. The teams were loaded just the same to go over the road, over the good road because there was no unloading it, it was carried through and deposited on the pipe line.

Q. Why didn't, if you know, Mr. Lee take advantage of the good road and haul as much as he could as far as the road went?

A. I don't know, sir. They trucked out some pipe on the good road.

Q. Did you understand it was because the expense of re-handling would take the advantage away?

A. I don't know, sir.

Q. Why did you, nothwithstanding that there was this hard road, just take what you could haul through the country?

A. Because we did not have a great way to go over the road.

Q. Well, it was in order to avoid re-loading them?

A. Yes, sir.

Q. I will ask you to state whether or not that there is any advantage in favor of the pipe line in having its men live in town and be varried to the place of work, or having them come out there and remain in a camp, which way is most advantageous.

A. I couldn't say in regard to the pipe line. I maintained a camp myself. I can't say as to the pipe line. I find it an advantage to have a camp because my men is all scattered. Of course I could get them out there quicker on a gravel road than to go through woods, but I maintain a camp because I have got them when I want them.

Q. Which is the least expensive?

A. I find them more expensive where I have got them scattered. I never can tell when I am going to have them and when I am not until they get there,

Redirect examination.

By Mr. Moore:

Q. Mr. French, don't you find that in running a camp, the camp always loses money?

A. Sometimes I lose money in a boarding camp but I always figure in making up the difference by having the men on hand.

[fol. 157] Q. [You-] work usually has been at places where you did not have good roads [them] to haul them out over?

A. Yes, sir, my work is practically all off the goods roads.

Q. Then it has been an absolute necessity to do the work at all, that you should have a camp?

A. Yes, sir, I always have a camp.

Q. Where you are convenient to a town it is much easier to go and haul labor than it is where you have a camp.

A. Well, I can haul labor a little easier, in town where they live in different places in town, but I run a camp even in town because I figure that I have always got them at my call in the morning, and if they are living out in town the chances are they will come up short and will have to leave teams in when I would not if I have got them right in my camp.

Q. You spoke about putting on loads for the bad part of the road instead of the gravelled part of the road?

A. Yes, sir.

Q. That was because you were going off the road?

A. Yes, sir.

Q. When these pipe were hauled out to the distributing point by trucks, did they not load to full capacity knowing they were going to stay on the gravel road?

A. I really don't know; I suppose they did.

Q. They did not get off the gravel road at all?

A. No, sir.

Q. Wasn't part of that right-of-way at times so bad that even with your teams you had to throw the pipe off and unload it and snake the pipe to the location?

A. I snaked the pipe a little bit through the bad places.

Q. Then it was impossible even with the light loads you hauled out to go along the right-of-way?

A. Yes, sir, it would have been impossible. Practically on any pipe line there is places you will have to unload and snake your load down the right-of-way one at a time.

Q. Then in hauling, if you come to one bad place, killed all the good road beyond that bad place, did it not?

A. Yes, sir.

Witness excused.

W. J. PAUP, a witness sworn on behalf of the defendant testified as follows:

[fol. 158] Direct examination.

By Mr. Moore:

Q. Your name is W. J. Paup?

A. Yes, sir.

Q. And you live in Texarkana?

A. Yes, sir.

Q. You have been employed to look after the accounting for the Miller County Highway and Bridge District for several years, have you?

A. Yes, sir.

Q. Have you become familiar with the assessments to a large extent through that work?

A. I have.

Q. State, if you can, what was the assessed value for County and State purposes during the year 1920 of the cleared land in that part of the Miller County Highway and Bridge District that is within the Miller Levee District No. 2?

A. Ten dollars per acre is my recollection of cleared land in cultivation.

Q. And what is the assessment of wild land?

A. It was on an average of $4.50 per acre.

Q. And what after getting away from the immediate territory of Texarkana, was the average assessment of the hill lands in that Miller County Highway and Bridge District?

Mr. Arnold: That is for the purpose of general taxation?

Mr. Moore: General taxation.

A. That runs on a average of $5 and $6 an acre.

Q. Now, from the information shown in this assessment roll that you hold there, what is the total assessment benefits against all the property within the Miller County Highway and Bridge District, the town property, the lots, public service corporations, all property?

A. You don't mean the County assessed valuation?

Q. No; the assessment of benefits for road purposes.

A. That was $6,687,178.00.

Q. What is the total assessment of benefits in the city of Texarkana and the town of Mandeville?

A. That would be $2,561,100.00.

Q. What is the total assessment of the lands for those purposes, that is, property outside of the city of Texarkana and the town of Mandeville?

A. $3,664,445.00.

Q. What is the total acreage of land in the district?

A. That is approximately 136,322 acres.

Q. What does that make the average assessment of benefits per acre on the rural property, the land outside the city?

A. $26.88 per acre.

Q. Give the number of mills on the dollar that has been assessed on the benefits in the district for the years commencing with the year 1916 and including the year 1924?

[fol. 159] A. The year 1916 they levied 6-2/3 mills for the benefits, 1917 was the same; 1918 was 7 mills; 1919, 7 mills. The years 1920, 1921, 1922 and 1923 we levied 10 mills, and for the year 1924, 8.5 mills.

Q. In arriving at the amount of taxes that any piece of property would pay, then the assessed benefits against that property was taken and multiplied by the number of mills for that particular year, and the result was the amount of taxes for that year. Is that correct?

A. That is correct.

Cross-examination.

By Mr. Arnold:

Q. The assessed benefits against property in the district, all property, city and country, ran something over $6,000,000?

A. Yes, sir.

Q. On account of the improvement from these roads?

A. Yes, sir.

Q. Now this percentage of levee to collect money to pay the interest and bonds is based on the benefits then?

A. On the benefits.

Q. And if a tract of land, if their benefits against a tract of land is assessed at so much, then these mills that you mentioned is collected on the basis of that alleged benefit?

A. Yes, sir. The benefits on a certain piece of property is placed at $1,000, they collected during those last four years 1 per cent of the benefits or $10.

Q. So the collection was on the benefits?

A. Yes, sir.

Q. And not on the assessment for general taxation?

A. No it was on the benefits.

Q. A certain percentage of those benefits were collected every year?

A. Yes, sir.

Q. The assessments for general taxation has no bearing then, directly?

A. Not in figuring the tax levy for each year.

Q. The lands lying in Miller Levee District No. 2 referred to by Mr. Moore a moment ago, which are assessed for general taxation, cleared $10 and the wild $4.50, that is bottom land?

A. Yes, sir.

Q. And generally considered very rich land?

A. Yes, sir.

Q. You were not one of the assessors yourself?

A. No, sir.

Q. You have not testified, I believe, with reference to the assessments against the pipe line or the telephone, telegraph or any of that?

A. No, I have not.

[fol. 160] Mr. Moore: That is already in evidence.

Mr. Arnold: I am not insisting on your taking more time, Mr. Moore.

E. H. PEYTON, a witness sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Moore:

Q. What is your name and residence?
A. E. H. Peyton, 612 Locust Street, Texarkana.
Q. What is your business?
A. I operate a farm.
Q. Where?
A. Paup Spur.
Q. Is that Paup Spur where the station on the Iron Mountain Railroad is and where the road forks from the Fulton road to go to Index?
A. Yes, sir.
Q. How many years have you been operating that farm at Paup Spur?
A. Since 1917.
Q. And do you stay down on that farm most of the time?
A. I lived there until last September.
Q. Had those good roads been completed when you moved there?
A. No, sir.
Q. What was the condition of the road between Texarkana and Paup Spur before these good roads were built?
A. There was just a good road from here to Mandeville and they were passable, but after you got into the bottoms during the rainy season, they were bad.
Q. Was it possible for an automobile to use those roads during the rainy season?
A. No, sir.
Q. In coming to town, how many head of stock would be used to pull a wagon through?
A. We always sent a four mule team, to haul out an ordinary load to Texarkana before the roads were completed.

The Court: A four mule team to haul a two mule load?
A. Yes, sir.

Q. Was there any roads part of the way from Paup Spur to Index?

A. There was a road that led out to about a mile and a half in the direction of the Car Bend.

Q. But the point where the Paup Spur road leaves the Car Bend road to Index, was there any road of any kind?

[fol. 161] A. No, sir, no road at all. You might meander around through the woods, but there was very little travelling through there.

Q. You state you were living at Paup Spur during the year 1921?

A. Yes, sir.

Q. Did the Prairie Pipe Line Company unload any pipe at that place during 1921?

A. Yes, sir.

Q. About how many cars, if you know?

A. I heard a witness say yesterday 21 cars, I don't know.

Q. You kept no record?

A. No, sir.

Q. You knew there was a large quantity unloaded?

A. Yes, sir.

Q. What was done with that pipe?

A. It was hauled out and distributed along the line.

Q. What means were used in hauling it from Paup Spur along the country road?

A. They used trucks, the greater part of it was hauled in trucks.

Q. Would those trucks leave the gravel road?

A. I don't think so.

Q. Did you have any teams on that haul during the year 1921?

A. Yes, sir.

Q. Did your teams haul from Paup Spur or from the distributing points along the gravel road?

A. We hauled some from Paup Spur, we usually took a load out in the morning and hauled as far as the good road and then we kept the team out there the rest of the day hauling from the good roads out along the line.

Q. In order to utilize all the time you would go out with one load and then haul the rest of the day from the distributing point?

A. Yes, sir.

Q. What was the character of the road over which you hauled after leaving the good road?

A. We just unloaded as soon as we got to the right-of-way of the pipe line. There was no road. It was a right-of-way made through the woods and we would follow that.

Q. What kind of loads could you haul on that pipe line right-of-way as compared with the loads that could have been hauled on the good road?

A. At that time it was very bad, wet, and two or three pipes, three pipes was as much as we could ever haul at one load.

Q. On the good road how could you have hauled compared with the capacity of the wagon?

[fol. 162] A. You could haul all you could get on the wagon. It wasn't a question of what we could pull, it was a question of what our wagons would hold.

Q. In hauling with trucks, was it also a question of what the truck would hold up, could they haul whatever load of that could be put on?

A. I have seen them go out of there with anywhere from 15 to 20 lengths of pipe on a truck.

Q. Did those trucks ever attempt to leave the good roads?

A. I don't think so.

Q. Were there places on this pipe line where you distributed pipe that would get wet and impassable for teams?

A. Yes, sir; quite often we had to unload our wagons and snake them, where we couldn't get along with the wagons, unload them and hitch a pair of mules to one length of pipe and pull it in place.

Q. In your opinion, was any advantage to the pipe line company for people to use that hard surface road in hauling their pipe out?

A. I should think so.

Q. On your farm can you raise any more crops of any kind because that good road is there?

A. No, I don't think I can.

Q. What is the advantage to your land of having a good road adjoining it?

A. Well, we have ice delivered in our box there every day, we come to town in 15 and 20 minutes and we have a rural carrier that delivers the mail right at our door.

Q. Then you think they are benefited just the same as the land raise any more crops?

A. Yes, sir.

Q. In your opinion, has benefit resulted to the pipe line from the building of this road?

A. They can haul the material over the road, they carry the men to and from the work, they are not very far from the pipe line at any time.

Q. Then you think they are benefited just the same as yourself for accessibility and ability to transport stuff?

A. Yes, sir.

Q. You have stated that they hauled their men over the road during the year 1921, how were the workmen who put this pipe in, how did the workmen get on to the job?

A. They were hauled on trucks from Texarkana and some of them provided their own automobiles.

Q. Were any of those men hauled from Mandeville as well as Texarkana?

A. Yes, sir, I think perhaps they kept their crew at Mandeville, a number of white men. They would work white [fol. 163] men. There was a number of white men around Mandeville that lived there that worked on this pipe line and they carried them and continued to carry them until they completed the line on up to De Queen.

Q. The way the road runs it bends by your house?

A. Yes, sir.

Q. And you could see the men going and coming?

A. Yes, sir.

Q. About how many men were being worked during the year 1921 on this pipe line?

A. At one time I would judge they had something like 150.

Q. For what length of time about, did the work continue?

A. For several months.

Q. When was the next work done after 1921 on the pipe line?

A. It commenced sometime in 1923, I think.

Q. And for what length of time did that continue?

A. Well, they completed it sometime like the first of 1924.

Q. Was any pipe unloaded at Paup Spur during 1923 and 1924?

A. Yes, sir.

Q. What quantity if you know? Or about what quantity?

A. Several cars.

Q. Did you work for the company during the period of 1923 and 1924 that you have mentioned?

A. I don't think we did. I don't think I had any teams on at that time.

Q. How were these pipes taken out during the years 1923 and 1924?

A. Most of the work was done with trucks. They hauled some with wagons and teams.

Q. What was the capacity of a truck in hauling at that time compared to what a truck would haul before.

A. They used these large trucks. I don't know whether they loaded them to the capacity or not, but they would haul from 15 to 20 lengths of pipe to the load.

Q. Do you know whether these trucks left the good road with those loads?

A. I think not.

Q. About how many men were worked during this period of 1923 and 1924 that you mentioned?

A. I don't think that they had quite as big a crew as the first line that they put down. They perhaps worked 75 or 100.

Q. And that continued for how many months?

A. Three or four months.

Q. How would those men be taken out on the work?

A. With the trucks.

[fol. 164] Q. Would you see the trucks pass your place?

A. Yes, sir.

Q. How many men would go out on the trucks?

A. I judge they would have anywhere from 25 to 30 men on a truck.

Q. Did you have occasion to pass by Mandeville at any time when repairs were being done on the station there?

A. Yes, sir.

Q. Did you ever notice any cars in any quantity that people would go out to work in?

A. Yes, sir.

Q. How many would you suppose you have seen?

A. They would be strung along the side of the good road for a long ways, most of them heading that direction, near the ditch as they could get and they would stand there all day.

Q. Did you notice whether there were a large number pulled up inside, inside the enclosure as well as those outside?

A. Yes, sir.

Q. How close does the road go to the fence and the buildings of the company?

A. Just the width of the right-of-way of the railroad to their holdings. The fence sets back possibly 200 feet from the railroad right-of-way.

Q. What were those men doing, if you noticed, that came out to Mandeville in those cars?

A. Well, they were distributed along where they were laying this pipe, digging ditches, cutting right-of-way. They would bring these men out and distribute them and then they had a crew at the Spur that stayed and loaded these trucks as they would come in, and then they had a crew unload them, that kept the trucks going all the time.

Q. What work, if any, was going on at the station at Mandeville?

A. I don't know what kind of labor they were doing there. I don't know. I saw them there. I suppose they were working, but I don't know the nature of the work they did.

Q. At the time this new pipe was being unloaded and hauled out from Paup Spur, was there any old pipe that had been taken up that had to be loaded and sent out?

A. Yes, sir.

Q. Do you know where that old pipe came from?

A. It was taken up from up there on the river, I think some of it was taken up where they changed the location of the line, and possibly some at other places that was bad pipe.

Q. How was that hauled into Paup Spur?

[fol. 165] A. By trucks.

Q. Was that brought in over these good roads?

A. Yes, sir. They hauled it with teams out to the good road and had it in large stacks and then they came there with trucks and brought it in.

Q. What year was that?

A. 1921 and 1922.

Q. It was during this year of 1923 or 1924 when this other work was done?

A. No.

Q. How many of these distributing points were there between Paup Spur and Index where the pipe was unloaded to be hauled out by teams?

A. They had one point right where the pipe line crosses the good road at or near Dr. Collins' farm, and then it goes on to Dr. Collins' farm and the next point was at or near the bridge across Red River.

Q. There were two distributing points?

A. Yes, sir.

Q. Trucks hauled it to these points and unloaded and then they had teams pick them up and distribute them?

A. Yes, sir.

L. C. ADAMS, a witness sworn on behalf of the defendant, testified as follows:

Direct examination.

By Mr. Moore:

Q. What is your name?

A. L. C. Adams.

Q. You live in Texarkana?

A. Yes, sir.

Q. Do you own a farm on Red River in the neighborhood of Homan?

A. Yes, sir.

Q. Do you spend a large part of your time on your farm?

Q. Yes, sir.

Q. For how many years have you been giving that your attention and living there a large part of the time?

A. About 40.

Q. What position do you hold with the Miller County Highway and Bridge District?

A. Vice-President.

Q. How long have you had that position?

A. Something like 10 months.

Q. You succeeded Dr. J. R. Dale?

A. Yes, sir.

Q. Are you well acquainted with the territory in Red River bottom between Homan and Index?

A. Yes, sir.

Q. You are in and have been in the cattle business for many years?

A. Yes, sir.

Q. Has that caused you to frequently go over that territory?

A. Yes, sir.

[fol. 166] Q. What character of roads did you have in Red River bottoms prior to the time the good roads were built from Texarkana extending through that district to Fulton and to Index?

A. Well, we had a public road, such as it was, running from here to Paup Spur, and then we had one from there going over in Little River County, one went down through Car Bend and we had a ferry there. We could run it.

Q. What proportion of the time would that ferry run?

A. Sometimes you could get across and sometimes you couldn't, if the river was up any at all you couldn't get across.

Q. What was the character of that road as to being a good or a bad road for hauling?

A. If it was dry in the summer time you could haul very well, but in the winter time I used from four to six mules for a two mule load.

Q. Your plantation was near Homan?

A. About three-quarters of a mile west.

Q. Prior to the building of this good road did you ever attempt to haul any of your cotton?

A. No, sir, we shipped all of our freight to Homan and all our cotton from Homan out.

Q. Why did you do that?

A. We couldn't get over the road.

Q. With the road in its present condition how many bales of cotton can you bring in with a four-up mule team?

A. 16 to 20.

Q. Was there any road after leaving Car Bend road between Index and Paup Spur?

A. No, sir, only the river road that run up the river front.

Q. That is, you went all the way over to where this ferry was and went up the river front?

A. Yes, sir, that is the only way we could get out of there.

Q. What is the character of the soil from the point where this road enters the bottoms between Mandeville and Paup Spur and Index?

A. Well, it is a black buck-shot land, water standing over it all of the time.

Q. Then without this road in connection, could heavy hauling have been done between Paup Spur and Index?

A. No, sir, couldn't have gotten over it at all only in every dry seasons and then we didn't have any road up through there. It was such a condition that you couldn't have a road through there.

[fol. 167] Q. Did you have occasion during the years 1923 and 1924 to frequently go from here to the farm and from your farm to Texarkana?

A. Yes, sir.

Q. Did you ever meet the workmen of the Prairie Pipe Line Company on their way to work?

A. Met them pretty often between 3 and 4 o'clock.

Q. How were those workmen taken out to work?

A. Hauled them in trucks, all that could get in them, and then any amount of cars.

Q. Within the last week since the fire, has there been any any large number of workmen going out to the plant?

A. Been running about two trucks loaded with men and any amount of cars.

Q. That is within the past week?

A. Yes, sir.

Q. You have met them yourself and seen them there?

A. Yes, sir.

Q. You have had considerable experience in hauling cotton and goods of various kinds?

A. Yes, sir.

Q. Before you looked after the farm yourself you did hauling and ran a livery business in Texarkana?

A. Yes, sir.

Q. From your knowledge thus gained, do you think that the building of this good road can be or has been any benefit to the pipe line company?

A. I consider it has been at least more than a half benefit to them.

The Court: What do you mean by that?

A. I mean by that, I will say three fourths, if they hauled 17 to 20 pipes off that road, they can't haul over three out on the right-of-way.

Q. You mean it has benefited them with reference to the traffic?

A. Yes, sir, I claim that is the only way they have been benefited, by the traffic.

Q. Does your farm receive any benefit from the road except the traffic you haul in or out?

A. Not a bit.

Q. You can't raise more crops or do any more work?

A. No, sir.

Q. You can't get any cotton choppers or pickers if you want them, because of it?

A. Yes, sir.

Q. Then explain what benefit, in your opinion, comes to the pipe line from having a good road crossing?

A. They can haul a good deal more pipe on the hard surface road. Now, for instance, they hauled from 15 to 17 [fol. 168] pipe up that road, they dumped it off and they could haul only 3 or 4 over the righ-of-way. In some places over the right-of-way they can't haul any, they have to snake it with mules.

Cross-examination.

By Mr. Arnold:

Q. Mr. Adams, you have been farming for a good many years?

A. Yes, sir.

Q. You own some of the rich land in the bottom?

A. Yes, sir.

Q. How many acres are there in your farm?

A. Between 5 and 6 thousand.

Q. Isn't the value of that farm increased by reason of the road?

A. Yes, sir.

Q. What was the value per acre of this land that you have before the road was built?

A. Well, the levee is the first thing that increases the value of the land. If you remember I bought a farm and had you looking after it. I think it figured about $18 an

acre, and about that time they were figuring on building the levee, and did just after. Now that land is worth, I guess, $100 an acre.

Q. Taking cultivated and uncultivated?

A. No, sir, the land outside the levee is not worth that much money. No, I don't figure that this in the woods is worth as much.

Q. The $100 applies to your cleared land?

A. Yes, sir.

Q. How much cleared land have you?

A. Something like 2,500 acres.

Q. And this that is in the woods, what price do you put on that?

A. $40 an acre for that that is inside the levee.

Q. Are there other farms in that vicinity?

A. Yes, sir.

Q. Other rich lands in that vicinity?

A. Yes, sir.

Q. As a matter of fact, the lands inside of Miller Levee District No. 2 which lies inside this road district, that is generally rich land?

A. All along the river front it is, the bottom land.

Q. What was the value of the cleared land did you say, prior to the making of these improvements, the levees and highways?

A. Well, there wasn't very many of us. I don't think there [—] but two of us. We just figured whenever we [fol. 169] could make a crop—had an overflow two or three times a year. I suppose anywhere from $5.00 to $12.50 an acre.

Q. What was the value of the unimproved land?

A. $2.00 to $5.00, I guess.

Q. And now you say the improved land is worth $100 an acre and the unimproved $40?

A. Yes, sir, I have got some outside of the levee that is worth $2 or $3; I would not have it at all if it wasn't holding together.

Q. That is not protected?

A. No, sir, it overflows every time the river gets up.

Redirect examination.

By Mr. Moore:

Q. You don't mean that the building of these roads alone have given the increase to the value of the land?

A. No, sir.

Q. Hasn't that increase come from a variety of circumstances, the building of the levee, digging of ditches, building of roads, increased price of cotton, the growth of the city of Texarkana that we are adjacent to, and so many elements that it would be hard to say which benefit came from any particular one?

A. I don't figure any certain thing, the addition is general conditions; I think the first advance that advanced the Red River land was the levee, and I think the next thing that advanced it was the ditches, and then the highway and being close to Texarkana is one.

Q. At the time you refer to this land being worth $12.50 that was many years ago, when cotton was selling at 7 cents?

A. Yes, sir we sold some for shipment to St. Louis at 4 cents.

Q. Then the advance of cotton to its present value has had a great deal to do with the advance of the land?

A. Yes, sir.

Mr. Moore: Your Honor, in order that the record be complete, I would like to introduce and consider read in evidence the act which originally created the Miller County Highway and Bridge District, being act 153 passed by the General Assembly of the State of Arkansas and approved March 5, 1915. Also the act in which the bridge district was divorced from the road district, and in which the assessment of benefits that had been made was confirmed. No. 15 passed by the general assembly of Arkansas and became a law January 29, 1917.

[fol. 170] The Court: Very well, they will be received in evidence.

"Act 153

An Act to lay off and establish a part of Miller County into a public Highway and Bridge District for the construction of public highways from the city of Texarkana to the various localities in the territory hereinafter described, and for the construction of a public bridge in connection with such highways over and across the Red River between Fulton and Index, and to organize and incorporate a Highway and Bridge District, and to provide for levying assessments and collecting the same, and for other purposes.

Be it enacted by the General Assembly of the State of Arkansas:

Section 1. That all the following territory lying and being situated in Garland, Homan and Lost Prairie townships of Miller County, to-wit:

Beginning on the State line between the States of Arkansas and Texas at the northwest corner of fractional section eighteen (18), township sixteen (16) south, range twenty-eight (28) west, thence east to the northeast corner of section sixteen (16), township sixteen (16) south, range twenty-eight (28) west, thence north to township line between townships fifteen (15) and sixteen (16) south, range twenty-eight (28) west, thence east on said township line to the west bank of the Red River, thence north and westerly along said west bank of Red River to the Texas State line, thence south to and along said State line to the beginning, be and the same is hereby created and constituted a Highway and Bridge District and said District shall be known as the 'Miller County Highway and Bridge District' and shall be a public agency and a body politic and corporate under said name and style, and by that name may sue and be sued, plead, and be impleaded, and have perpetual succession for the purposes hereinafter designated. The said district may have a common seal, and may make such by laws and regulations as from time to time may be deemed proper, not inconsistent with this Act or the laws of this State, for the purpose of carrying into effect the object of its creation. And said district may appoint all officers and agents which it deems necessary, and suitable,

for the conduct of the business of said corporation, and may do all other acts and things not inconsistent with the [fol. 171] laws of this State, which may be proper to carry into effect the purposes and objects of this Act.

Section 2. Said district shall have the power to construct and maintain sixty (60) miles of free public highways of such material as it may deem best, leading from the city of Texarkana to such point on the Red River between Fulton and Index, at which it may deem desirable and suitable to construct a bridge over and across said Red River in connection with the plan and system of such highways, and at such point so selected on Red River, said district shall have power to construct and maintain a free public bridge in connection with said highways over and across said Red River, and within the boundaries of the territory constituting said district in Miller County, and said district shall have the power to construct and maintain other free public highways in connection with the highway leading to said bridge, in the territory of said district, of such material as it may deem best, leading from the city of Texarkana to such other points and localities in said territory to which it may deem desirable and best calculated to serve the best interests of the people as a whole in said territory, but not to exceed in the aggregate in connection with the highway to said bridge, sixty (60) miles in length.

The commission shall have the power to grant a right-of-way over said bridge to any public utility upon such terms as the commission may determine; Provided, However, that concessions which may be granted to public utilities shall not interfere with the use of such bridge as a public highway.

Section 3. The affairs of said district shall be managed and controlled and all improvements authorized shall be made by a commission, which shall be composed of three land owners, residents of said district. They shall serve during the existence of said district, and in the event of a vacancy on said commission it shall be filled by appointment by the county judge of Miller County. E. W. Frost, J. R. Dale and Fred W. Offenhauser are hereby appointed the commission of said Miller County Highway and Bridge District.

Section 4. Within thirty days after the passage of this act said commisioners shall qualify by taking an oath that they will faithfully discharge the duties of their position, and shall not be financiallly interested, directly or indirectly, in any contract for material or construction, or any other other contract made by said commission. And should any commissioner be interested directly or indirectly in any contract, as above described, he shall be guilty of a mis- [fol. 172] demeanor, and on conviction thereof shall be fined in any sum not less than one thousand dollars and not exceeding five thousand dollars. Said commissioners shall serve without compensation. They shall also elect one of their members president, who shall preside at all meetings of the commissioners. The president shall vote on all questions and shall be the chief executive officer of said district. They shall appoint a secretary, who shall hold at their pleasure, and who shall keep a record of the proceedings of the commission and perform such duties as may be required by this Act and the commission, and shall receive such compensation as the commission may determine. And in carrying out the objects of this Act and their incorporation, said commission may appoint and employ all officers, attorneys and agents whom they deem necessary and suitable in the conduct of the business of said corporation, and may do all other acts and things not inconsistent with the laws of this State which may be proper to carry into effect the purposes of this Act.

Section 5. The said Board of Commissioners shall have the power, and it is hereby made their duty, to build and construct a public highway from the city of Texarkana over (and) across the territory in said district to such point on Red River as they may select for the purpose of building the bridge over and across Red River in connection with said highway and system of highways, between Fulton and Index, as aforesaid. Provided, the commission shall only improve such public highways as may have been laid out or may hereafter be laid out by the county court of Miller County. And said board shall also have power, and it is hereby made their duty, to build and construct a bridge over and across said Red River at such point suitable in all respects for footmen, vehicles, railroads and other public utilities, if in the opinion of said commission it may be

deemed necessary under this Act. Said highways and bridges to be built where, in the discretion of said Board of Commissioners, it is most practicable and best to commence, locate and end; and they shall have power to protect and maintain such highways and bridge in such effective condition as honest, able and energetic efforts on their part may obtain, by building, rebuilding and repairing, or such other work as the board may deem necessary. They shall have power to employ all agents necessary for the execution of their duty. They shall determine the crown, height, slope and grade of said highways, as well as the dimensions and character, in every respect, of said bridge, and make all needful regulations, and do all things in their opinion [fol. 173] necessary to secure and promote the public convenience and safety over said highways and bridge.

And the district, through the commissioners, shall have the right of eminent domain, and such right is hereby expressly conferred upon them for the purpose of condemning [and] land, levees and buildings, or other property, public or private for the purpose of the right-of-way of said highway and bridge, wherever located as aforesaid; and they shall further have the right of eminent domain, and the same is hereby expressly conferred upon them, for the purpose of condemning any approach or approaches to said bridge at either end thereof in whatsoever county the same may be located; and in assessing damage arising from the condemnation of the land of any person or corporation for the purposes set forth in this Act, the accruing benefit to his or its land or lands by the construction of such highways and bridge, when constructed, must be taken into consideration.

Section 6. For the purpose of carrying into effect the provisions of this Act, the commission shall form plans for the construction of such highway and bridge, and shall procure estimates of the cost thereof. For this purpose they may employ engineers and other agents as may be needful, and may provide for their compensation which, with all other necessary expenses shall be taken as a part of the cost of said improvement, and such expenses and cost so incurred shall be charged on the real property in the district, and shall be raised and paid by assessments as hereinafter prescribed for the payment of the public improvement itself.

Section 7. Immediately after ascertaining the cost of the public improvement contemplated by this Act, the commission shall appoint three assessors, who shall reside in the district; each of said assessors shall, before entering upon the discharge of his duty, take an oath to well and truly assess to the best of his ability the value of all benefits to be received by each land owner by reason of the proposed improvement, as affecting each tract of land in said district. They shall ascertain the value of the real property within said district without said improvements, and also the value of all the roads, tramroads, street railroads, electric light and water plants, rights-of-way, telephone and telegraph lines, pipe lines, and all other franchises whatsoever connected with the realty in said district, an assessment according to the value of the benefit that will accrue to it by reason of the construction of said highways and bridge.

[fol. 174] The Board of Assessors shall within one hundred and twenty (120) days after their organization complete their duties by filing with the commission a list showing the description of the property of the district, the owners' names, as far as same appear from the last county assessment, and such corrections as they may ascertain should be made, and the valuation of each lot, tract or parcel of land, railroad, street railway, gas and electric light plant, water plant, tramroads, telephone and telegraph lines, pipe lines and all other franchises of whatsoever description in any way connected with the realty in said district without the improvement, and the valuation with the improvement, and the benefit estimated to accrue to each lot, tract or parcel of land, railroad, tramroad, street railway, gas and electric light plant, water plant, telegraph and telephone lines, pipe lines and all other franchises of whatsoever description in any way connected with the realty in said district by reason of the improvement; and shall file the same with the county clerk of Miller County for the inspection of all persons interested. Notice of the filing of said assessments shall be given by publication in one newspaper published in Texarkana, Arkansas, and said notice shall set a date not less than thirty days distant, and the place where any complaint may be made by any land owner, railroad, tramroad, street railway, gas and electric plant, water plant, telegraph or telephone line, pipe line or any franchise what-

soever in any way connected with the realty in said district before the Board of Assessors of any assessment made against his or its property.

The said Board of Assessors shall correct any inequality, injustices, or errors, which they may find in the assessment, and shall hold meetings for the purpose of hearing the complaints of the owners of any such property in said district as to said assessment, and shall increase or decrease the assessment so as to adjust the burden of the assessment to the benefit to accrue to the real property. Provided, that in reassessing the benefits for the making of said improvements, the assessors shall never diminish the total amount of the assessed benefits in case said district shall have incurred debts. The Board of Assessors may adjourn from day to day until the hearings are completed. Any property owners as aforesaid, aggrieved by the action of said Board of Assessors, may take an appeal to the commission within thirty days from the action of the Board of Assessors, upon his complaint; or any other property owner [fol.175] aforesaid may appeal from the action of the Board of Assessors from any assessment which acts unequally upon his property.

The commission shall hear all appeals and determine the same, and appeals may be taken from the commission to the County Court in the same manner as is now provided by law that appeals may be taken from the county equalization board to the County Court, which said appeals, shall be taken within thirty (30) days from the action of the commission complained of.

The assessors shall be paid the sum of three ($3.00) dollars per day for the time actually engaged by them in the discharge of the duties of their office.

When the assessors have completed their work, and all appeals therefrom have been heard by the commission, the commissioners shall then equalize the assessment so as to equalize and adjust all the assessments to the benefit to accrue to each lot or parcel of real estate, railroad, tramroad, street railway, gas and electric light plant, water plant, or right-of-way, telephone or telegraph line, pipe line, or any other franchise whatsoever, connected with the realty of said district assessed, which said equalization shall

be completed within thirty days after the time for appeal from the Board of Assessors has expired.

Section 8. As soon as all of the assessments have been equalized and adjusted as aforesaid, the commission shall by resolution charge each lot, tract or parcel of real estate, railroad, tramroad, right-of-way, street railway, gas and electric plant, water plant, pipe line, telephone and telegraph lines and all other franchises in any way connected with the realty in said district, with an assessment equal to the benefit estimated in the said assessment list, to accrue to such land, lot, tract or parcel of land, railroad, tramroad, gas and electric plant, water plant, pipe line, telephone and telegraph line, and all other franchises of whatsoever nature in any way connected with the realty in said district, and the commission shall apportion such assessment into annual installments so as to realize annually only such a sum of money as will be necessary to meet the expenses incurred in each year from interest and a sinking fund to pay the bonded indebtedness, and for such improvements and maintenance as the commission shall determine shall be paid from the assessment annually.

provided, that the improvements herein undertaken shall not exceed 15 per cent of the valuation of real property in [fol. 176] said district, subject to improvement district assessment, as ascertained by the State and county assessments of said property for the year next preceding the time when the assessment herein provided for may be made. Provided, however, that this limitation of 15 per cent of valuation shall not prevent an annual assessment, as hereafter provided, for the maintenance of the improvement after the cost of the construction has been paid.

That all railroads, street railroads, tramroads, right-of-way, roadbeds, pipe lines, telegraph and telephone lines, and all other franchises in any way connected with the realty of said territory, and the appurtenances in said district, shall be assessed according to the betterments and increase in value in like manner as herein prescribed for real estate, except that said assessment shall be made per mile, and no error in the name and residence of the owners or the description thereof shall invalidate said assessment, if sufficient description of the property sought to be taxed is

given to ascertain where it is situated. The commission shall annually appoint a Board of Assessors, which shall each year perform the duties hereinbefore provided, which Board of Assessors shall continue as far as possible the assessment first made, but shall take into consideration the improvements and enhanced value so as to equalize the burdens of taxation for the district.

Section 9. Said assessments declared in said resolution shall be a charge and a lien against all real estate in the said district from the date of said resolution, and shall be entitled to preference over all judgments, executions, incumbrances, or other liens whatsoever, and shall continue until such assessment, with any penalties and costs which may accrue thereon, shall be paid; provided, that as between grantor and grantee all payments on same after the date of the transfer of the real property in said district shall be payable by the grantee.

Section 10. The board shall annually, before the first of September determine the amount of taxes which will be required for the succeeding year, and enter upon its records an order levying the same upon the benefits to the property of the district, subject to taxation thereunder.

The amount of taxes herein provided for shall be annually extended upon the tax books of the county, and collected by the collector of county along with other taxes, and for his services in making such collections the collector shall re- [fol. 177] ceive a commission of one per cent; and the same shall by the collector be paid over to the treasurer of the district at the same time that he pays over the county funds. If any collector shall fail to collect the road tax along with the other taxes, he shall be subject to a penalty of one hundred dollars for each instance in which he shall collect from an individual the other taxes and omit the road tax, unless the road tax has been enjoined by a court of competent jurisdiction, to be recovered in a suit brought by the commissioners to the use of the district; and the county clerk shall be subjected to a like penalty for each case in which he shall fail to enter the road tax on the tax books.

Section 11. In order to hasten the work, the board may borrow money at a rate of interest not exceeding six per cent per annum, may issue negotiable bonds therefor,

signed by the members of the board, and may mortgage all assessments for the repayment thereof. It may also issue to the contractors who do the work its negotiable evidences of debt, bearing interest at not exceeding six per cent.

No bonds issued under the terms of this Act shall run for more than thirty years; and all issues of bonds may be divided so that a portion thereof may mature each year as the assessments are collected, or they may all be made payable at the same time, with proper provisions for a sinking fund.

Section 12. The secretary of the board shall annually deliver to the county clerk before he has made up the tax books, a list of all the property subject to taxation thereunder within the district, with the amounts assessed against each tract to be paid at the next collection of taxes. All taxes levied under the terms of this Act shall be payable between the first Monday in January and the tenth day of April of each year; and if any taxes levied by the County Court in pursuance to this Act are not paid at maturity, the collector shall not embrace such taxes in the taxes for which he shall sell such property, but he shall report such delinquencies to the Board of Commissioners of said district who shall add to the amount of the tax a penalty of twenty-five per cent; and said Board of Commissioners shall enforce the collection by chancery proceedings in the Chancery Court of Miller County; and such court shall give judgment against such property for the amount of such taxes, and said penalty of twenty-five per cent, and interest [fol. 178] on same, from the end of sixty days allowed for the collection thereof, at a rate of 6 per cent per annum, and all costs of the proceedings. Such judgment shall provide for the sale of said delinquent property for cash, by a commissioner of the court, after advertising as hereinafter set out. Said proceedings and judgment shall be in the nature of proceedings in rem, and it shall be immaterial that the ownership of said property be incorrectly alleged in said proceedings, and such judgment shall be enforced wholly against such property, and not against any other property or estate of said defendant. All or any part of said delinquent property may be included in one suit instituted for the collection of said delinquent taxes, etc., as

aforesaid, and notice of the pendency of such suit shall be given by publication weekly for four weeks before judgment is entered, for the sale of said property, in some newspaper published in the county, where such suits may be pending, which public notice may be in the following form:

Miller County Highway and Bridge District

vs.

Delinquent Lands

All persons having or claiming an interest in any of the following described property, are hereby notified that suit is pending in the Chancery Court of Miller County, Arkansas, to enforce the collection of certain road taxes on the subjoined list of property, each supposed owner having been set opposite his or her or its property, together with the amounts severally due from each, to-wit:

(Then shall follow a list of supposed owners, with a descriptive list of said delinquent property, and amounts due thereon respectfully, as aforesaid.)

And said public notice may conclude in the following form:

All persons and corporations interested in said property, are hereby notified that they are required by law to appear within four weeks and make defendant to said suit, or the same will be taken for confessed and final judgment will be entered directing the sale of said property for the purpose of collecting said taxes, together with the payment of interest, penalty and costs allowed by law.

—— ——, Clerk of Said Court.

And said suit shall stand for trial at the first term of court after the complaint may be filed, if said four weeks shall expire either before the first day of the term, or dur- [fol. 179] ing the term of court to which said suits are brought respectively, unless a continuance be granted for good cause shown, within the discretion of the court; and such continuance for good cause shown, may be granted as to a part of said property of defendants without affecting the duty of the court to dispose finally of the others

as to whom no continuance may be granted; and in all cases where notice has been properly given as aforesaid, and where no answer has been filed, or if filed, and the cause decided for the plaintiff, the court, by its decree, shall grant the relief as prayed for in the complaint; and shall direct said commissioners to sell the property described in the complaint at the court house door of Miller County, at public outcry, to the highest and best bidder, for cash in hand, after having first advertised such sale (such advertisement may include all [all] the property described in the decree), weekly for two weeks, consecutively, in some newspaper published in the county, if there be one, and if no newspaper then that such advertisement be published in some newspaper in adjoining county, and if all the property be not sold on the day as advertised, then such sale shall continue from day to day until completed; and said commissioners shall by proper deeds convey to the purchaser the property so sold, and the title to said property shall thereupon become vested in such purchaser as against all others whomsoever, saving to infants and insane persons having no guardian or curator the right they now have by law to appear and except to said proceedings within three years after their disabilities are removed.

In all suits brought under this section a reasonable attorney's fee shall be taxed in favor of the attorney for the plaintiff, which fee shall be added to the amount of the costs.

In case the commissioner shall fail to commence suit within sixty days after the taxes become delinquent, the holder of any bond issued by the district shall have the right to bring suit for the collection of the delinquent assessments, and the proceedings in such suit brought by the bond holder shall in all respects be governed by the provisions applicable to suits by the commissioners.

Section 13. Said suits shall be conducted in the name of such road district, and in accordance with the practice and proceedings of chancery courts in this state, except as herein otherwise provided, and neither attorneys ad litem nor guardians ad litem, nor any of the provisions of Section 6254 of Kirby's Digest of the Statutes of Arkansas shall be [fol. 180] required; and said suits may be disposed of on oral testimony, as in ordinary suits at law; and this law

shall be liberally construed to give to said assessment and tax lists the effect of bona fide mortgages for a valuable consideration and a first lien upon said property, as against all persons having an interest therein. In such suits it shall be sufficient to allege generally and briefly the organization of the district and the nonpayment of taxes, setting forth the description of the property proceeded against, and the amount chargeable to each tract, with prayer for foreclosure. Provided, that no informality or irregularity in holding any of the meetings provided for therein, or valuation or assessment of the lands, or in the name of the owners, or the number of acres therein, shall be a valid defense to such action; provided, that in any case where the property is offered for sale by said commissioners, as provided by this Act, and the sum of the tax due, together with interest, cost and penalty, is not bid for the same, the said commissioners shall bid the same off in the name of the Board of Commissioners of said road district, bidding therefor the whole amount due as aforesaid; and shall execute his deed therefor as in other cases under this Act, conveying such property to such board, and such deed when duly executed in conformity to the provisions of this Act, and recorded, shall be received as evidence in all cases, showing an indefeasible title in said purchaser, unassailable in either law or equity.

Provided, that at any time within two years after the rendition of the final decree of the Chancery Court herein provided for, the owner of the property may file his petition in the court, rendering the decree, alleging the payment of taxes on said property for the year for which they were sold; and upon the establishment of that fact the court shall vacate and set aside the decree; and, provided, that any land owner shall have the right — redeem any and all property sold at such sale within the time now fixed by law for redemption from sales under foreclosure of improvement district liens.

Section 14. All bonds issued by the commissioners under the terms of this Act, shall be secured by a lien on all property, subject to taxation hereunder, and the Board of Directors shall see to it that a tax is levied annually, and collected under the provisions of this Bill, so long as it may be neces-

sary to pay any bond issued or obligation contracted under its authority; and the making of said assessments or levy and collection may be enforced by mandamus.

[fol. 181] If any bond or interest coupon on any bond issued by said board is not paid within thirty days after its maturity, it shall be the duty of the Chancery Court of Miller County, on application of any holder of such bonds or interest coupon so overdue, to appoint a receiver to collect the taxes aforesaid, and the assessor to reassess the benefits if necessary, and the proceeds of such taxes and collections shall be applied, after the payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by the said board, which are then due and payable, and the said receiver may be directed by suit to foreclose the lien of said taxes on said lands, and the suits so brought by the said receiver shall be conducted in all matters as suits by the board, as hereinbefore provided, and with like effect, and the decrees and deeds herein shall have the same presumption in their favor; provided, however, that when all such sums have been paid the receiver shall be discharged, and the affairs of the district conducted by the Board of Directors of said district as hereinbefore provided.

Section 15. In the event of the description of any lot, tract or parcel of property upon the list of the assessment hereinbefore provided to be made, shall for any reason be uncertain, indefinite or insufficient, then in any suit brought to enforce the payment of any assessment, the court shall have power to correct such description and enforce the collection of any assessment due thereon, having due regard for the rights of any parties who may have intervened.

Section 16. No allowance to the special commissioner for his services shall exceed $5.00 for each lot, tract or parcel of land sold and certificate made by him.

Section 17. If any appeal be taken from any decree herein mentioned, the Supreme Court shall advance the cause on its docket and shall hear and decide the case at as early a day as is practicable. Said transcript shall be filed in the office of the clerk of the Supreme Court within twenty days after rendering the decree appealed from.

Section 18. The Supreme Court shall either affirm or reverse the decree appealed from, or render such a decree as should have been rendered by the lower court, or shall remand the same to the inferior court without delay.

Section 19. In taking such an appeal the appellant shall only include in the transcript so much of the record as relates to his own land.

[fol. 182] Section 20. No appeal shall be prosecuted from any decree after the expiration of twenty days herein granted for filing the transcript in the clerk's office of Supreme Court.

Section 21. A majority of the commission shall constitute a quorum for the transaction of business and the commission may prescribe rules for its own government and fix its time of meeting. And the commission shall have the right to employ such other persons and agents not herein mentioned as may in their judgment be necessary to carry out the object and purposes of this Act. The commissioner shall make an annual statement showing in full all the transactions of the commission for the year, and a copy of said annual statement shall be filed with the clerk of Miller County. The first annual statement shall be filed within one year from the organization of the commission, and annually thereafter.

Section 22. The highway and bridge district herein created shall have the power to acquire and hold the real and personal property and may receive gifts, donations and bonuses for the purpose of carrying out the object and purposes of this Act, and to receive rents from the concessions heretofore authorized from public utilities, railroads and transportation companies for the purposes of construction, repair or maintenance of the public improvement herein contemplated. The said district shall have power to acquire such real estate as may be necessary for the right-of-way of said highway and bridge, and approaches and abutments thereto, and the commission is clothed with authority to contract for the necessary land for said highway and bridge and approaches and abutments thereto, and pledge so much of the revenue of the district as may be necessary to pay for the same. The said highway and bridge district herein

created may conduct, operate and maintain the highway and bridge, and necessary approaches thereto, along and over the public highways of the State of Arkansas or across and under waters or over any land or public works belonging to this State, and on or over lands of private individuals or corporations; provided just damages shall be paid to owners of the land taken or used for the highway and bridge, or its approaches and abutments.

Section 23. In the event that the highway and bridge district should fail to obtain by agreement with the owner of the property upon which said highway and bridge, its approaches and abutments are to be located, the right thereto, it may apply to the Circuit Court of the county in which the [fol. 183] property is located by petition to have the damages for so much of the property as is taken, and the right-of-way over the property itself, giving the owner of such property at least ten days' notice in writing of the time and place where such petition will be heard.

Section 24. In case [*of*] property sought to be condemned is owned by any individual or corporation, and is located in more than one county, the petition may be filed in any Circuit Court having jurisdiction of any county in which the whole or a part of such property may be located, and the proceedings had in such Circuit Court will apply to all such property designated in such petition.

Section 25. If the owner, or owners, of such property be non-residents of this State, infants and persons of unsound mind, such notice shall be given by publication in a newspaper in the county where the land is situated which is authorized by law to publish legal notices, which notice shall be published for the same length of time as may be required in other civil causes.

Section 26. In all cases of infants or persons of unsound mind when no legal representative or guardian appears in their behalf at the hearing it shall be the duty of the court to appoint a guardian ad litem who shall represent their interests for all purposes.

Section 27. Such petition shall, nearly as may be, describe the right-of-way which is sought, and for which damages

are asked to be assessed, whether improved or unimproved, and be sworn to by some one of the commissioners.

Section 28. It shall be the duty of the court to impanel a jury of twelve men as in other civil causes, to ascertain the amount of compensation which said district shall pay and the matter shall proceed and be determined as other civil causes.

Section 29. The amount of damages to be paid the owner of such lands for the right-of-way for the use of such district shall be determined and assessed irrespective of any benefits said owner may receive from any inprovement proposed by such district.

Section 30. In all cases where damages for the right-of-way for the use of the district has been assessed in the manner hereinbefore provided, it shall be the duty of such high-[fol. 184] way and bridge district to deposit with the court, or pay to the owners, the amount so assessed, and pay such costs as may in the discretion of the court be adjudged against it within thirty days after such assessment; whereupon, it shall and may be lawful for such highway and bridge district to enter upon, use and have the right-of-way over said land forever.

Section 31. Where the determination of questions in controversy in such proceedings is likely to retard the progress of the work on said highway and bridge, or its approaches and abutments thereto, the court or judge in vacation shall designate an amount of money to be deposited by such district, subject to the order of the court, and for the purpose of making such compensation when the amount thereof shall have been assessed as aforesaid, and said judge shall designate the place of such deposit.

Section 32. Whenever such deposit shall have been made in compliance with the order of the court, or judge, it shall be lawful for such district to enter upon such land and proceed with its work through and over the land in controversy prior to the assessment and payment of damages for the use and right to be determined as aforesaid.

Section 33. In all cases where such district shall not pay or deposit the amount of damages assessed as aforesaid

within thirty days after such assessment it shall forfeit all rights in the premises.

Section 34. The words "right-of-way" as used in this Act shall be construed to mean and include all grounds necessary for the construction of the highways and bridge, its approaches and abutments, and its piers, and all other necessary lands for the purposes of carrying out the construction of said highway and bridge.

Section 35. It is the intention and purpose of this Act to confer in the preceding twelve sections the right of condemnation as now exercised by telegraph, telephone and railroad corporation under sections 2947 to 2958 of Kirby's Digest, so far as the same may be applicable hereto.

Section 36. Authority is hereby conferred upon the County Court of Miller County to take over and acquire the highway and bridge, the construction of which is herein provided for, upon such terms as may be agreed upon as to its future maintenance by said court and the commission herein created, or their successors and officers; and au- [fol. 185] thority is also hereby conferred upon the County Court of Miller County to assist said commission in the construction of said highway and bridge by contributing to said commission any such of money on any terms it may deem proper out of any funds which it may now by law appropriate, levy and collect for bridge and road purposes. In the event the highway and bridge is not taken over by the County Court as a public highway of said county, then the commissioner- are authorized, after the improvement herein provided for is paid for, to annually levy assessments upon the real property of said district; said assessments to be apportioned upon the benefits to be derived from the maintenance of said highway and bridge for the purpose of maintaining same and its approaches, abutments and piers in good repair and condition so as to keep it forever open to the public.

Section 37. Whereas this Act is necessary for the preservation of the public health, peace and safety, an emergency is hereby declared to exist, and this Act shall take effect and be in force from and after its passage.

Approved March 5, 1915"

"Act 15

An Act to amend Act number 153 of the Acts of the General Assembly of the State of Arkansas of the year 1915, being an Act forming the Miller County Highway and Bridge District

Be it enacted by the General Assembly of the State of Arkansas:

That Act No. 153 of the General Assembly of the State of Arkansas of the session of 1915, entitled, 'An Act to lay off and establish a part of Miller County into a public Highway and Bridge District for the construction of public highways from the city of Texarkana to the various localities in the territory hereinafter described, and for the construction of a public bridge in connection with such highways over and across the Red river between Fulton and Index, and to organize and incorporate a Highway and Bridge district, and to provide for levying assessments and collecting the same, and for other purposes,' approved March 5, 1915, be amended to read as follows:

[fol. 186] Section 1. That all the following territory lying and being situated in Garland, Homan and Lost Prairie Townships of Miller County to-wit:

Beginning on the State line between the States of Arkansas and Texas at the northwest corner of fractional section (18) eighteen, township sixteen (16) south, range twenty-eight (28) west, thence east to the northeast corner of section sixteen (16), township sixteen (16) south, range twenty-eight (28) west, thence north to township line between townships fifteen (15) and sixteen (16) south, range twenty-eight (28) west, thence east on said township line to the west bank of the Red River, thence north and westerly along said west bank of Red river to the Texas State line, thence south to and along said State line to the beginning; also those parts of Hempstead and Lafayette counties which are south and west of Red river and north of the township line between townships fifteen (15) and sixteen (16) south, be and the same is hereby created and constituted a Highway and Bridge District and said district shall be known as the 'Miller County Highway and Bridge District,' and shall be a public agency and a body politic and corporate

under said name and style, and by that name may sue and be sued, plead and be impleaded, and have perpetual succession for the purposes hereinafter designated. The said district may have a common seal, and may make such by-laws and regulations as from time to time may be deemed proper, not inconsistent with this Act or the laws of this State, for the purpose of carrying into effect the object of its creation.

Section 2. Said district shall have the power to construct and maintain seventy-five (75) miles of free public highways, of such material as they may deem best, consisting of two main lines from the city of Texarkana northerly to the Red river, and from said city easterly to said river, with such branches as they may deem advantageous; and the plans for said highways heretofore adopted by said board are hereby ratified and confirmed, and declared to be the plans for said improvements, granting, however, to the board the power to build additional roads within said territory, or to vary said plans if it becomes desirable to do so.

Section 3. The affairs of said district shall be managed and controlled and all improvements authorized shall be made by a commission, which shall be composed of three land owners, resident of said district. They shall serve [fol. 187] during the existence of said district, and in the event of a vacancy on said commission it shall be filled by appointment by the remaining commissioners. E. W. Frost, J. R. Dale and Fred W. Offenhauser are hereby appointed the commission of said Miller County Highway and Bridge District.

Section 4. Within thirty days after the passage of this Act said commissioners shall qualify by taking an oath that they will faithfully discharge the duties of their position, and shall not be financially interested, directly or indirectly, in any contract for material or construction, or any other contract made by said commission. And should any commissioner be interested directly or indirectly in any contract, as above described, he shall be guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than one thousand dollars and not exceeding five thousand dollars. Said commissioners shall serve without

compensation. They shall elect one of their members president, who shall preside at all meetings of the commissioners. The president shall vote on all questions and shall be the chief executive officer of said district. They shall appoint a secretary, who shall hold at their pleasure, and who shall keep a record of the proceedings of the commission and perform such duties as may be required by this Act and the commission, and shall receive such compensation as the commission may determine. And in carrying out the objects of this Act and their incorporation, said commission may appoint and employ all officers, attorneys and agents whom they deem necessary and suitable in the conduct of the business of said corporation, and may do all other acts and things not inconsistent with the laws of the State which may be proper to carry into effect the purposes of this Act.

Section 5. Said Board of Commissioners shall have the power, and it is hereby made their duty, to construct the highways according to the plans heretofore laid down, with such additions thereto as may be found necessary, unless the [plabs] are changed as hereinafter provided; and they shall have the power to protect and maintain such highways in such effective condition as honest, able and energetic efforts on their part may obtain, by building, rebuilding and repairing, or such other work as the Board may deem necessary for the execution of their duty. They shall determine the crown, height, slope and grade of said highways.

Section 6. The assessment heretofore made by the assessors for said district is hereby ratified and confirmed as the [fol. 188] assessments of the benefits which will accrue from the making of the improvements herein contemplated, and the assessors heretofore named by the board shall proceed to make a similar assessment upon the lands in Hemstead and Lafayette counties hereby added to this district.

If the board changes its plans of improvement, it shall file such changed plans with the county clerk of Miller county, and if either the board or any individual thinks that, by reason of said changes in the plans, the assessment heretofore made has become inequitable, a new assessment of benefits shall be ordered by the board, and the board may, not oftener that once a year, order a re-assessment of the bene-

fits in the entire district; but in no event shall the total amount of the assessed benefits within the district ever be diminished; and if any future assessment should be for an amount less than the preceding assessment of benefits, such assessment shall be void, and the preceding assessment shall continue in force.

The assessment of the lands in Hempstead and Lafayette counties hereby added to the district shall be made in the same book as the present assessment and in the same manner.

Future assessments of benefits shall be made in books to be furnished by the board, which shall show the lands of the district as they appear on the county tax books, with such corrections as may be necessary, and shall also show the railroad, street railway, gas and electric light, water, tramroad, telephone, telegraph and pipe lines by the mile, and also all other franchises of whatever description in any way connected with the realty in the district. Opposite each piece of property shall be placed the name of the owner, if known to the assessors, and the amount of the betterments. Such assessment shall be filed with the county clerk of Miller County, for the inspection of all persons interested; and upon its filing, the secretary of the board shall give notice by publication in a newspaper published in Texarkana, Arkansas, that the assessment has been filed, and shall set a date not less than thirty days distant and a place where any person interested may appear before the Board of Assessors and complain of the assessment of his property or of the assessment of any other property in the district.

At the time fixed in said notice the Board of Assessors shall meet and shall hear the complaints of property owners, and shall increase or decrease the assessments so as to adjust the burden thereof to the benefit that will accrue. The [fol. 189] Board of Assessors may adjourn from day to day until the hearings are completed. Any property owner aggrieved by the action of the Board of Assessors may appeal to the commission within thirty days; and the commission shall meet at some convenient time and hear all appeals and determine the same, and their decision shall be final. The assessors shall be paid the sum of three dollars ($3.00) per day for the time they are actually engaged in the discharge of their duties.

Section 7. All the acts of the commissioners of said Miller County Highway and Bridge District, and of all their agents insofar as they have acted by the authority of the commissioners, and all acts of the assessors of said district are hereby ratified and confirmed, particularly the action of said commissioners in levying taxes upon the assessed benefits in said district, by their resolution adopted on the 5th day of December, 1916, and their action in issuing bonds of said district, numbered from one (1) to two hundred and twenty-three (223), and bearing date of November 1, 1916, for the aggregate sum of two hundred and twenty-three thousand dollars ($223,000.00); and the execution of the pledge to secure the same and also their action in settling with the St. Louis, Iron Mountain & Southern Railway Company, by accepting a cash sum of twenty thousand dollars (20,000.00), in lieu of the amount charged against said railroad by said tax levy, and made payable in installments; and the said board is authorized from time to time to issue other bonds as may be required, either for the purpose of completing the improvement herein contemplated or for the purpose of funding the bonds which may have been issued under this act; provided that the improvements authorized by this Act shall not cost more than ten per cent of the value of the real property in said district as authorized by the last State and county assessment made before the particular work is undertaken; but interest shall not be computed as part of such costs.

If, in the future, the assessed value of the property in the district shall be increased, and the power of the board to expend money for improvements shall increase proportionately, and the board shall have the authority to levy further taxes in excess of the ten per cent limit herein prescribed, for the purpose of [makinf] necessary repairs upon the highways improved by it.

Section 8. The assessors heretofore appointed shall continue to be the assessors of the district until discharged by [fol. 190] the board, which may appoint their successors from time to time.

Section 9. Said assessments shall be a charge and a lien against all real estate in the said district from the date of said resolution, and shall be entitled to preference over all

judgments, executions, incumbrances, or other liens whatsoever, and shall continue until such assessment, with any penalties and costs which may accrue thereon, shall be paid; provided, that as between grantor and grantee all payments on same after the date of the transfer of the real property in said district shall be payable by the grantee.

Section 10. Whenever the board shall issue any bonds, it shall levy upon the assessed benefits a tax, payable through a series of years until maturity of said bonds, of an amount sufficient to pay said bonds with interest as they mature; and may pledge and mortgage said levy to secure payment of such bonds.

In addition to this levy for the payment of the bonds, the board shall annually, before the first of September determine the amount of taxes which will be required for the succeeding year, and enter upon its records an order levying the same upon the benefits to the property of the district, subject to taxation thereunder.

The amount of taxes herein provided for shall be annually extended upon the tax books of the county, and collected by the collector of county along with other taxes, and for his services in making such collections the collector shall receive a commission of one per cent; and the same shall by the collector be paid over to the treasurer of the district at the same time that he pays over the county funds. If any collector shall fail to collect the road tax along with the other taxes, he shall be subject to a penalty of one hundred dollars for each instance in which he shall collect from an individual the other taxes and omit the road tax, unless the road tax has been enjoined by a court of competent jurisdiction, to be recovered in a suit brought by the commissioners to the use of the district; and the county clerk shall be subjected to a like penalty for each case in which he shall fail to enter the road tax on the tax books.

Section 11. The secretary of the board shall annually deliver to the county clerk of the respective counties before he has made up the tax books, a list of all the property subject to taxation thereunder within the district in his county, [fol. 191] with the amounts assessed against each tract to be paid at the next collection of taxes. All taxes levied under the terms of this Act shall be payable between the

first Monday in January and the tenth day of April of each year; and if any taxes levied in pursuance to this Act are not paid at maturity, the collector shall not embrace such taxes in the taxes for which he shall sell such property, but he shall report such delinquencies to the board of commissioners of said district who shall add to the amount of the tax a penalty of twenty-five per cent; and the said board of commissioners shall enforce the collection by chancery proceedings in the chancery court of Miller County; and such court shall give judgment against such property for the amount of such taxes, and said penalty of twenty-five per cent, and interest on same, from the end of said sixty days allowed for the collection thereof, at the rate of 6 per cent per annum, and all costs of the proceedings. Such judgments shall provide for the sale of said delinquent property for cash, by a commissioner of the court, after advertising as hereinafter set out. Said proceedings and judgment shall be in the nature of proceedings in rem, and it shall be immaterial that the ownership of said property be incorrectly alleged in said proceedings, and such judgment shall be enforced wholly against such property, and not against any other property or estate of said defendant. All or any part of said delinquent property may be included in one suit instituted for the collection of said delinquent taxes, etc., as aforesaid, and notice of the pendency of such suit shall be given by publication weekly for four weeks before judgment is entered, for the sale of said property, in some newspaper published in the county, where such suits may be pending, which public notice may be in the following form:

'Miller County Highway and Bridge District

vs.

Delinquent Lands

All persons having or claiming an interest in any of the following described property, are hereby notified that suit is pending in the chancery court of —— county, Arkansas, to enforce the collection of certain road taxes on the subjoined list of property, the name of each supposed owner have been set opposite his or her or its property together with the amounts severally due from each, to-wit:

(Then shall follow a list of supposed owners with a descriptive list of said delinquent property, and amounts due thereon respectively, as aforesaid.)'

[fol. 192] And said public notice may conclude in the following form:

'All persons and corporations interested in said property, are hereby notified that they are required by law to appear in four weeks and make defense to said suit, or the same will be taken for confessed, and final judgment will be entered directing the sale of said property for the purpose of collecting said taxes, together with the payment of interest, penalty and costs allowed by law.

—— ——, Clerk of Said Court.'

And said suit shall stand for trial at the first term of court after the complaint may be filed, if said four weeks shall expire before the first day of the term, or during the term of court to which said suits are brought respectively, unless a continuance be granted for good cause shown, within the discretion of the court; and such continuance for good cause shown, may be granted as to a part of said property or defendants without affecting the duty of the court to dispose finally of the others as to whom no continuance may be granted; and in all cases where notice has been properly given as aforesaid, and where no answer has been filed, or if filed, and the cause decided for the plaintiff, the court by its decree, shall grant the relief as prayed for in the complaint; and shall direct said commissioners to sell the property described in the complaint at the courthouse door of the county where the property lies, at public outcry, to the highest and best bidder for cash in hand, after having first advertised such sale (such advertisement may include all the property described in the decree), weekly for two weeks, consecutively, in some newspaper published in the county where the land lies, and if all the property be not sold on the day as advertised, then such sale shall continue from day to day until completed; and said commissioners shall by proper deeds convey to the person the property so sold, and the title to said property shall thereupon become vested in such purchaser as against all others whomsoever, saving to infants and insane persons having no guardian or curator the right they now have by

law to appear and except to said proceedings within three years after their disabilities are removed.

In all suits brought under this section a reasonable attorney's fee shall be taxed in favor of the attorney for the plaintiff, which fee shall be added to the amount of the costs. [fol. 193] In case the commissioners shall fail to commence suit within sixty days after the taxes become delinquent, the holder of any bond issued by the district shall have the right to bring suit for the collection of the delinquent assessments, and the proceedings in such suit brought by the bond holder shall in all respects be governed by the provisions applicable to suits by the commissioners.

Section 12. Said suits shall be conducted in the name of such road districts, and in accordance with the practice and proceedings of chancery courts in this State, except as herein otherwise provided, and neither attorneys ad litem nor guardians ad litem, nor any of the provisions of section 6254 of Kirby's Digest of the Statutes of Arkansas shall be required; and said suits may be disposed of on oral testimony, as in ordinary suits at law; and this law shall be liberally construed to give to said assessment and tax lists the effect of bona fide mortgages for a valuable consideration and a first lien upon said property, as against all persons having an interest therein. In such suits it shall be sufficient to allege generally and briefly the organization of the district and the non-payment of taxes, setting forth the description of the property proceeded against, and the amount chargeable to each tract, with prayer for foreclosure. Provided, that no informality or irregularity in holding any of the meetings provided for herein, or valuation or assessment of the lands, or in the name of the owners, or the number of acres therein, shall be a valid defense to such action; provided, that in any case where the property is offered for sale by said commissioners, as provided by this act, and the sum of the tax due, together with interest, cost and penalty, is not bid for the same, the said commissioner shall bid the same off in the name of said board of commissioners of said road district, bidding therefor the whole amount due as aforesaid; and shall execute his deed therefor as in other cases under this Act, conveying such property to such board, and such deed when

duly executed in conformity to the provisions of this Act, and recorded, shall be received as evidence in all cases, showing an [indefeasable] title in said purchaser, unassailable in either law or equit.

Provided, that at any time within two years after the rendition of the final decree of the chancery court therein provided for, the owner of the property may file his petition in [fol. 194] the court, rendering the decree, alleging the payment of taxes on said property for the year for which they were sold; and upon the establishment of that fact the court shall vacate and set aside the decree; and, provided, that any land owner shall have the right to redeem any and all property sold at such sale within the time now fixed by law for redemption from sales under foreclosure of improvement district liens.

Section 13. All bonds issued by the commissioners, under the terms of this Act, shall be secured by a lien on all property subject to taxation hereunder, and the board of directors shall see to it that a tax is levied and collected under the provisions of this bill, so long as it may be necessary to pay any bond issued or obligation contracted under its authority; and the making of said assessments or levy and collection may be enforced by mandamus.

If any bond or interest coupon on any bond issued by said board is not paid within thirty days after its maturity, it shall be the duty of the chancery court of Miller county, on application of any holder of such bonds or interest coupon so overdue, to appoint a receiver to collect the taxes aforesaid, and an assessor to reassess the benefits if necessary, and the proceeds of such taxes and collection shall be applied, after the payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by the said board, which are then due and payable, and the said receiver may be directed by suit to foreclose the lien of said taxes on said lands, and the suits so brought by the said receiver shall be conducted in all matters as suits by the board, as hereinbefore provided, and with like effect, and the decrees and deeds herein shall have the same presumptions in their favor; provided, however, that when all such sums have been paid the receiver shall be discharged, and the affairs of the district conducted by the board of directors of said district as hereinbefore provided.

Section 14. In the event the description of any lot, tract or parcel of property upon the list of the assessment hereinbefore provided to be made, shall for any reason be uncertain, indefinite or insufficient, then in any suit brought to enforce the payment of any assessment, the court shall have power to correct such description and enforce the collection of any assessment due thereon, having due regard for the rights of any parties who may have intervened.

[fol. 195] Section 15. No allowance to the special commissioner for his services shall exceed $1.00 for each lot, tract or parcel of land sold and certificate made by him.

Section 16. If any appeal be taken from any decree herein mentioned, the Supreme Court shall advance the cause on its docket and shall hear and decide the case at as early a day as is practicable. Said transcript shall be filed in the office of the clerk of the Supreme Court within twenty days after rendering the decree appealed from.

Section 17. The Supreme Court shall either affirm or reverse the decree appealed from, or render such a decree as should have been rendered by the lower court, or shall remand the same to the inferior court without delay.

Section 18. In taking an appeal the appellant shall only include in the transcript so much of the record as relates to his own land.

Section 19. No appeal shall be prosecuted from any decree after the expiration of twenty days herein granted for filing the transcript in the clerk's office of Supreme Court.

Section 20. A majority of the commission shall constitute a quorum for the transaction of business and the commission may prescribe rules for its own government and fix its times of meeting. And the commission shall have the right to employ such other persons and agents not herein mentioned as may in their judgment be necessary to carry out the objects and purposes of this Act. The commissioner shall make an annual statement showing in full all the transactions of the commission for the year, and a copy of said annual statement shall be filed with the county clerk of Miller county. The first annual statement shall be filed

within one year from the organization of the commission and annually thereafter.

Section 21. The commission shall improve only such highways as may have been declared to be public highways by the county court of the county where the highways run.

Section 22. This Act being necessary for the preservation of the public health, peace and safety, an emergency is hereby declared, and this Act shall take effect and be in force from and after its passage. Approved January 29, 1917."

Mr. Arnold: In connection with these special acts, I don't know whether it is necessary to introduce them or not.

The Court: I think not.

[fol. 196] Mr. Arnold: It may be a matter of convenience. Then I will ask that act 16, an act to create Red River Bridge District, of the acts of 1917, pages 78, be also introduced in evidence. It is the other branch of the original formation of the district, which has a bearing upon it.

Mr. Moore: I can't see the idea of that. You might say the act creating the Miller Levee District has a bearing on it. I don't see that this other act can have any bearing whatever, it is an entirely separate organization.

The Court: I think it may be received for whatever purpose it may have.

"Act 16

An Act to Create the Red River Bridge District

Be it enacted by the General Assembly of the State of Arkansas:

Section 1. That all of Little River county, and all that part of Miller county within the following boundaries: Beginning on the state line between the states of Arkansas and Texas at the northwest corner of fractional section eighteen (18), township sixteen (16), south, range twenty-eight (28) west, thence east to the northeast corner of section sixteen (16), township sixteen (16) south, range twenty-eight (28) west, thence north to township line between townships fifteen (15) and sixteen (16) south, range

twenty eight (28) west, thence east on said township line to the west bank of the Red river, thence north and westerly along said west bank of Red River to the Texas State line, thence south to and along said State line to the beginning; also those parts of Hempstead and Lafayette counties that are now west and south of Red River and north of the township line between township fifteen (15) and sixteen (16) south; be and the same is hereby created an improvement district under the name of the Red River Bridge District, and the same shall be a public agency and a body politic and corporate under said name and style, and by that name it may sue and be sued, and have perpetual succession for the purposes hereinafter set forth.

The said district may have a common seal, and may make such by-laws and regulations as from time to time its commissioners may deem proper, not inconsistent with this act or the laws of this State, for the purpose of carrying into effect the object of its creation.

Section 2. Said District is organized for the purpose of constructing and maintaining a free public bridge across the Red River at some point to be selected by the Com- [fol. 197] missioners of the District within its limits; and the board of commissioners shall have the power to grant a right-of-way over said bridge to any public utility upon such terms as it may determine; provided, however, that concessions which may be granted to public utilities shall not essentially interfere with the use of such bridge as a public highway.

Section 3. The affairs of said district shall be managed by a board of commissioners, which shall be composed of three residents of Miller County, who are owners of land in the district. E. W. Frost, J. R. Dale and Fred W. Offenhauser of Miller County, and Lon T. Jones, H. G. Sanderson and W. M. Gatwright of Little River county, are hereby named commissioners of said District. If any vacancy shall occur upon the board amongst the members from Miller county, the vacancy shall be filled by the remaining members of that county. If any vacancy shall occur amongst the members of the board from Little River county, it shall be filled by the remaining members of Little River county. The members of the board may be removed by the circuit

court of the county for which they are appointed upon charges of neglect of duty, incapacity, dishonesty or misfeasance in office; but the charges shall be in writing, and the hearing shall be upon notice, and the commissioners removed shall have the right of appeal.

Section 4. Within thirty days after the passage of this Act said commissioners shall qualify by taking oath that they will faithfully discharge the duties of their position, and shall not be financially interested, directly or indirectly in any contract for material or construction, or any other contract made by said commissioners. And should any commission be interested directly or indirectly in any contract, as above described, he shall be guilty of a misdemeanor, and on conviction thereof shall be fined any sum not less than one thousand dollars and not exceeding five thousand dollars. They shall elect one of their members president, who shall preside at all meetings of the commissioners. The president shall vote on all questions and shall be the chief executive officer of said District. They shall appoint a secretary, who shall hold at their pleasure, and who shall keep a record of the proceedings of the commissioners and perform such duties as may be required by this Act, and the commission, and shall receive such compensation as the commissioners may determine. And in carrying out the objects of this Act and their incorporation, said [fol. 198] commissioners may appoint and employ all officers, attorneys and agents whom they deem necessary suitable in the conduct of the business of said corporation, and may do all other Acts and things not inconsistent with the laws of this State which may be proper to carry into effect the purposes of this Act.

Section 5. In order to secure a proper site for the building of the bridge and its approaches, the commission shall have the right of eminent domain, which shall be exercised in the manner provided for the exercise of right of eminent domain by railroad, telegraph and telephone companies.

Section 6. For the purpose of carrying into effect the provisions of this Act, the commission shall form plans for the construction of such bridge, and shall procure estimates

of the cost thereof. For this purpose they may employ engineers and other agents as may be needful, and may provide for their compensation which, with all other necessary expenses, shall be taken as a part of the cost of said improvement, and such expenses and costs so incurred shall be *shall be* charged on the real property in the district, and shall be raised and paid by assessments as hereinafter prescribed for the payment of the public improvement itself.

Section 7. Immediately after ascertaining the cost of the improvement contemplated by this Act, the commission shall appoint two assessors who shall be resident land owners of Miller county, and two assessors who shall be resident land owners of Little River County, and who shall constitute the board of assessors of the District. Each assessor shall, before entering upon the discharge of his duties, take an oath well and truly to assess the value of all benefits to be received by each land owner by reason of the proposed improvement. They shall then proceed to assess the value of the benefits which shall accrue to each piece of real property within the said district and also to all railroads, tramroads, street railroads, electric light and power plants, telephone and telegraph lines, and all other franchises, connected with the realty within said district; and they shall enter the same in duplicate books made for the purpose, in which the lands and other property shall be described as the same appear on the last county assessment, with such corrections as may be necessary, with the names of the supposed owners opposite thereto, and the amount of the benefits assessed. They shall subscribe said assessment, and one copy thereof shall be filed with the county clerk of Miller county, and one copy with the county clerk [fol. 199] of Little River county, for the inspection of all persons interested. Notice of the filing of said assessment shall be given by the secretary of the board for two weeks by publication in a newspaper published in the city of Texarkana, and by one published in the town of Ashdown. Said notice shall fix a date, not less than thirty days from the first publication, and a place in the city of Texarkana, and a place upon a different date in the town of Ashdown, where complaint may be made by the owner of any property assessed before the board of assessors.

On the dates fixed in said notice the board of assessors shall assemble at the respective places, and shall hear the complaint of all owners of property within the county where they are sitting, and shall, increase or decrease the assessment, after having heard the complaints of the property owners, so as to adjust the burden of the assessment to the benefit which shall accrue to the property. The board of assessors may adjourn from time to time until the hearings are completed. Any property owner who deems himself aggrieved by the action of said board of assessors may take an appeal from the actions of the assessors to the board of commissioners within thirty days. The commission shall hear all appeals and determine the same, and their finding in the premises shall be final.

The assessors shall be paid three dollars ($3.00) per day for the time actually engaged in the discharge of the duties of their office. They shall continue to hold office at the pleasure of the board, and the board may direct a re-assessment not oftener than once a year; but the total amount of the assessment shall never be diminished after the board has incurred debts, and if on any reassessment the total amount of the assessed benefits is less than in the preceding assessment, such reassessment shall be void, and the previous assessment shall remain the assessment of the District until a new assessment is ordered by the board.

Assessment of railroads, street railroads, tramroads, roadbeds, pipe lines, telegraph and telephone lines shall be by the mile, and not by the acre.

The amount of interest which will accrue on bonds issued by the district shall be included and added to the tax; but the interest to accrue on account of the issuing of said bonds shall not be construed as a part of the cost of con- [fol. 200] struction in determining whether or not the expenses and costs of making said improvements are, or are not equal to or in excess of the benefits assessed.

When the assessments is made and filed with the county clerks, as above provided, the owners of property subject thereto shall have the privilege of paying their assessments in full within thirty days after the assessment becomes final; but all such assessments shall be made payable in installments, so that not more than five per cent (5%) shall be collectible in any one year against the wishes of the land

owner; and in the event that any land owner avails himself of this indulgence the deferred installments of the assessed benefits shall bear interest at the rate of six per cent (6%) per annum, and shall be payable only in installments as levied.

The levy of the assessment may be made by way of proportional amounts of the total assessed benefits, and interest need not be calculated until it is necessary to do so to avoid exceeding the total amount of the benefits and interest.

Section 8. In order to make the improvement contemplated by this Act, the board may issue its negotiable bonds, bearing a rate of interest not exceeding six per cent (6%), for an amount not exceeding the estimated cost of the work, payable at such times and places as the board may determine. Said bonds shall not be sold for less than par, unless by unanimous vote of the board. To secure the payment of said bonds, the board may pledge and mortgage its assessments of benefits.

Section 9. When the assessments have been equalized and adjusted by the board of commissioners said board shall proceed, by resolution entered upon its minutes, to levy upon the assessed benefits a tax sufficient to pay the estimated cost of the work, with incidental expenses; but said assessment shall be divided into installments, so that not more than five per cent (5%) of the assessed benefits shall be collected in any one year. Provided, however, that no improvement shall be undertaken that will cost more than five per cent (5%) of the valuation of the property subject to taxation hereunder within the district; and if it be ascertained that the improvement hereby contemplated cannot be made within that limit of cost, the same shall be abandoned; but in estimating the cost of the work interest upon money borrowed shall not be deemed a part of the cost; nor shall said limitation of five per cent (5%) prevent [fol. 201] an annual assessment in excess thereof for the maintenance of the improvement after the construction thereof.

Section 10. Said assessment as declared in said resolution shall be a charge and a lien against all real estate in the said district from the date of said resolution, and shall

be entitled to preference over all judgments, executions, incumbrances, or other liens whatsoever, and shall continue until such assessment, with any penalties and costs which may accrue thereon, shall be paid; provided, that as between grantor and grantee all payments on same after the date of the transfer of the real property in said District shall be payable by the grantee.

Section 11. The board shall annually, before the first of September, determine the amount of taxes which will be required for the succeeding year, and enter upon its records an order levying the same upon the benefits to the property of the district, subject to taxation thereunder.

The amount of taxes herein provided for shall be annually extended upon the tax books of the county, and collected by the collector of the counties along with other taxes, and for his services in making such collections the collector shall receive a commission of one per cent; and the same shall by the collector be paid over to the treasurer of the district at the same time that he pays over the county funds. If any collector shall fail to collect the bridge tax along with the other taxes, he shall be subject to a penalty of one hundred dollars for each instance in which he shall collect from an individual the other taxes and omit the road tax, unless the bridges tax has been enjoined by a court of competent jurisdiction, to be recovered in a suit brought by the commissioners to the use of the district; and the county clerk shall be subjected to a like penalty for each case in which he shall fail to enter the bridge tax on the tax books.

Section 12. The secretary of the board shall annually deliver to the county clerk before he has made up the tax books, a list of all the property subject to taxation thereunder within the district, with the amounts assessed against each tract to be paid at the next collection of taxes. All taxes levied under the terms of this Act shall be payable between the first Monday in January and the tenth day of April of each year; and if any taxes levied in pursuance to this Act are not paid at maturity, the collector shall not embrace such taxes in the taxes for which he shall sell such property, but he shall report such delinquencies to the board of commissioners of said District who shall add to the amount of the tax a penalty of twenty-five per cent, and said

[fol. 202] board of commissioners shall enforce the collection by chancery proceedings in the chancery court of the county where the property lies; and such court shall give judgment against such property for the amount of such taxes, and said penalty of twenty-five per cent, and interest on same, from the end of sixty days allowed for the collection thereof, at the rate of 6 per cent per annum, and all costs of the proceedings. Such judgment shall provide for the sale of said delinquent property for cash, by a commissioner of the court, after advertising as hereinafter set out. Said proceedings and judgment shall be in the nature of proceedings in rem, and it shall be immaterial that the ownership of said property be incorrectly alleged in said proceedings, and such judgment shall be enforced wholly against such property, and not against any other property or estate of said defendant. All or any part of said delinquent property may be included in one suit instituted for the collection of said delinquent taxes, etc., as aforesaid, and notice of the pendency of such suit shall be given by publication weekly for four weeks before judgment is entered, for the sale of said property, in some newspaper published in the county, where such suits may be pending, which public notice may be in the following form:

"Red River Bridge District

vs.

Delinquent Lands

All persons having or claiming an interest in any of the following described property, are hereby notified that suit is pending in the chancery court of —— County, Arkansas, to enforce the collection of certain bridge taxes on the subjoined list of property, each supposed owner having been set opposite his or her or its property, together with the amounts severally due from each, to-wit:

(Then shall follow a list of supposed owners, with a descriptive list of said delinquent property, and amounts due thereon respectively, as aforesaid.)"

And said public notice may conclude in the following form:

"All persons and corporations interested in said property, are hereby notified that they are required by law to appear within four weeks and make defense to said suit or the same will be taken for confessed and final judgment will be entered directing the sale of said property for the pur- [fol. 203] pose of collecting said taxes, together with the payment of interest, penalty and costs allowed by law.

—— ——, Clerk of said Court."

And said suit shall stand for trial at the first term of court after the complaint may be filed, if said four weeks shall expire either before the first day of the term, or during the term of court to which said suits are brought respectively, unless a continuance be granted for good cause shown, within the discretion of the court; and such continuance for good cause shown may be granted as to a part of said property of defendants without [effecting] the duty of the court to dispose finally of the others as to whom no continuance may be granted; and in all cases where notice has been properly given as aforesaid, and where no answer has been filed, and the cause decided for the plaintiff, the court, by its decree, shall grant the relief as prayed for in the complaint; and shall direct said commissioners to sell the property described in the complaint at the courthouse door of the county where the property lies, at public outcry, to the highest and best bidder, for cash in hand, having first advertised such sale (such advertisement may include all the property described in the decree), weekly for two weeks, consecutively, in some newspaper published in the county, if there be one, and if no newspaper then that such advertisement be published in some newspaper in — adjoining county, and if all the property be not sold on the day as advertised, then such sale shall continue from day to day until completed; and said commissioner shall by proper deeds convey to the purchaser the property so sold, and the title to said property shall thereupon become vested in such purchaser as against all others whomsoever, saving to infants and insane persons having no guardian or curator the right they now have by law to appear and except to said proceedings within three years after their disabilities are removed.

In all suits brought under this section a reasonable attorney's fee shall be taxed in favor of the attorney for the plaintiff, which fee shall be added to the amount of the costs.

In case the commissioners shall fail to commence suit within sixty days after the taxes become delinquent, the holder of any bond issued by the district shall have the right to bring suit for the collection of the delinquent assessments and the proceedings in such suit brought by the bond holder [fol. 204] shall in all respects be governed by the provisions applicable to suits by the commissioners.

Section 13. Said suits shall be conducted in the name of such bridge district, and in accordance with the practice and proceedings of chancery courts in this State except as herein otherwise provided, and neither attorneys ad litem nor guardians ad litem, nor any of the provisions of section 6254 of Kirby's Digest of the Statutes of Arkansas shall be required; and said suits may be disposed of on oral testimony, as in ordinary suits at law; and this law shall be literally construed to give to said assessment and tax lists the effect of bona fide mortgages for a valuable consideration and a first lien upon said property, as against all persons having an interest therein. In such [cuits] it shall be sufficient to allege generally and briefly the organization of the district and the non-payment of taxes, setting forth the description of the property proceeded against, and the amount chargeable to each tract, with prayer for foreclosure. Provided, that no informality or irregularity in holding any of the meetings provided for herein, or valuation or assessment of the lands, or in the name of the owners, or the number of acres therein, shall be a valid defense to such action; provided, that in any case where the property is offered for sale by said commissioners, as provided by this Act, and the sum of the tax due, together with interest, cost and penalty, is not bid for the same, the said commissioners shall bid the same off in the name of the board of commissioners of said bridge district, bidding therefor the whole amount due as aforesaid; and shall execute his deed therefor as in other cases under this Act, conveying such property to such board, and such deed when duly executed in conformity to the provisions of this Act, and recorded, shall be recieved as evidence in all cases, showing an indefeasible title in said purchaser, unassailable in either law or equity.

Provided, that at any time within two years after the rendition of the final decree of the [chancer-] court herein provided for, the owner of the property may file his petition in the court, rendering the decree, alleging the payment of taxes on said property for the year for which they were sold; and upon the establishment of that fact the court shall vacate and set aside the decree; and provided, that any land owner shall have the right to redeem any and all property sold at such sale within the time now fixed by law for redemption from sales under foreclosure of improvement district liens.

[fol. 205] Section —. All bonds issued by the commissioners under the terms of this Act, shall be secured by a lien on all property, subject to taxation hereunder, and the board of commissioners shall see to it that a tax is levied, and collected under the provisions of this bill, so long as it may be necessary to pay any bond issued or obligation contracted under its authority; and the making of said assessments or levy and collection may be enforced by mandamus.

If any bond or interest coupon on any bond issued by said board is not paid [with-] thirty days after its maturity, it shall be the duty of the chancery court of Miller County on application of any holder of such bonds or interest coupon so overdue, to appoint a receiver to collect the taxes aforesaid, and an assessor to reassess the benefits if necessary, and the proceeds of such taxes and collections shall be applied after the payment of costs, first to overdue interest, and then to payment pro rata of all bonds issued by the said board, which are then due and payable, and the said receiver may be directed by suit to foreclose the lien of said taxes on said lands, and the suits so brought by the said receiver shall be conducted in all matters as suits by the board, as hereinbefore provided, and with like effect, and the decree and deeds herein shall have the same presumptions in their favor; provided, however, that when all such sums have been paid, the receiver shall be discharged, and the affairs of the district conducted by the board of directors of said District as hereinbefore provided.

Section 15. In the event *of* the description of any lot, tract or parcel of property upon the lists of the assessment hereinbefore provided to be made, shall for any reason be

uncertain, indefinite or insufficient, then in any suit brought to enforce the payment of any assessment, the court shall have power to correct such description and enforce the collection of any assessment due thereon, having due regards for the rights of any parties who may have intervened.

Section 16. No allowance to the special commissioner for his services shall exceed $5.00 for each lot, tract or parcel of land sold and certificate made by him.

Section 17. If an appeal be taken from any decree herein mentioned, the Supreme Court shall advance the cause on its docket and shall hear and decide the case at as early a day as is practicable. Said transcript shall be filed in the office of the clerk of the Supreme Court within twenty days after rendering the decree appealed from.

[fol. 206] Section 18. The Supreme Court shall either affirm or reverse the decree appealed from, or render such a decree as should have been rendered by the lower court, or shall remand the same to the inferior court without delay.

Section 19. In taking such an appeal the appellant shall only include in the transcript so much of the record as relates to his own land.

Section 20. No appeal shall be prosecuted from any decree after the expiration of twenty days herein granted for filing the transcript in the clerk's office of Supreme Court.

Section 21. A majority of the commission shall constitute a quorum for the transaction of business and the commission may prescribe rules for its own government and fix its time of meeting. And the commission shall have the right to employ such other persons and agents not herein mentioned as may in their judgment be necessary to carry out the object and purposes of this Act. The commission shall make and annual statement showing in full all the transactions of the commission for the year, and a copy of said annual statement shall be filed with the county clerks of Miller and Little River counties. The first annual statement shall be filed within one year from the organization of the commission and annually thereafter.

Section 22. This Act being for the immediate preservation of the public peace, health and safety, an emergency

is hereby declared, and this act shall take effect and be in force from and after its passage.

Approved January 29, 1917."

R. A. McGrew, being recalled, testified in rebuttal as follows:

Direct examination.

By Mr. Arnold:

Q. You testified yesterday that in 1920 and following that time the costs of reconstructing the pipe line would be, I believe you said, about $11,500 a mile?

A. Yes.

Q. I will ask you to state what per cent of the cost of that construction is involved in the hauling and the distribution of the pipe itself along the line?

A. My testimony yesterday, I think, for stringing, distribution of materials would run between $375 and $400 per mile at that time and the total cost of all line construction would be in the neighborhood of $11,500 a mile. So [fol. 207] that would throw the cost of distribution of materials to amount to, roughly, 4 per cent.

Q. Four per cent of the cost of construction?

A. Four per cent of the total cost.

Q. Is this definition of the stringing include hauling it from the railroad and putting it on the right-of-way of the pipe line?

A. Yes, sir, it includes the total cost of handling materials from the point of shipment to the right-of-way. That is one of the prime items of pipe line construction in handling an estimate, that is always included as an item, unloading and stringing.

Q. Un-oading, hauling and stringing?

A. Yes, sir, it is the transportation of items involved in the transportation from point of shipment to the point of ultimate use on the right-of-way.

Cross-examination.

By Mr. Moore:

Q. The price you state per mile at that time was approximately $11,000.00?

A. That was my estimate of construction.

Q. That is for a single line of pipe?

A. Single line of 8-inch pipe line.

Q. Then where you had four lines, as you had here, it would be about $44,000 per mile, it would [*more*] no difference in per mile cost?

A. It would be four times what the other would be.

Q. What I am trying to get at is this $11,500 is the cost of laying one string of it?

A. One string of 8-inch pipe.

Q. If you laid a second it would be $11,500?

A. For one 8-inch line.

Q. It would cost as much to lay?

A. I was giving my opinion,—

Q. I am asking you if it would not cost equally as much to lay the second pipe line?

A. I made myself clear that it cost $11,500 per mile to construct.

Q. You decline to answer whether it would cost that much to lay a second line?

A. The statement itself is an answer.

By Mr. Arnold:

Q. That includes the value of the pipe itself?

A. It includes the total cost.

[fol. 208] Louis Josephs, being recalled, tesified in rebuttal as follows:

Direct examination.

By Mr. Arnold:

It has been testified that the total assessments of benefits made during the year 1920 against the Prairie Pipe Line Company is $60,000. What was the rate during the years 1921, 1922 and 1923?

A. The rate of benefits, the rate of proportion of the benefits of that $60,000 benefits assessed as the total benefits against the company, Your Honor, was 10 mills.

Q. How much would that be, the total payments that would be made by the pipe line company for each of those years?

A. Just $600.

The Court: One per cent?

A. One per cent, yes, sir. Mr. Black, I believe it was, made a statement here that he came to the conclusion that his company would have to pay $60,000 in taxes to the road district and that is the impression that I desire to correct. That is the benefits assessed against the company, Mr. Moore, but by no means, or manner of means would that be the taxes that they would have to pay.

Q. Since the tax has been reduced to 8½ mills then the tax now under that would be less than $600?

A. Fifteen per cent less.

Q. Would be a reduction of $90 for this year. Then the total taxes spread over the 20 years that the bond runs would be not in excess of $12,000 and probably a total of not in excess of $20,000?

A. Mr. Moore, if the entire 20 years period carried a one per cent assessment, even in that event the taxes that they would pay would not exceed $12,000. But it has never been that. It began at 6⅔ and went up to 10 and is reduced to 8 and will be further reduced in proportion to the amount we receive of the highway tax.

Cross-examination.

By Mr. Moore:

Q. What is the outstanding bond indebtedness?

A. $353,000.00

Q. Are the directors getting ready to issue some more bonds?

A. $35,000.00.

Q. This district don't automatically close itself?

A. The first bonds will be retired in 20 years from the date of issue, and all the succeeding bonds will automatically [fol. 209] be retired 20 years from date of issue and the

final bond as I recall now, Your Honor, the last one either 1940 or 1941.

Q. What do you mean by automatically retires?

A. They were all made 20 year bonds.

Q. They will be retired when paid?

A. Yes, sir. There will be no additional raise then in taxes against any taxpayer in the district for this additional $35,000.00.

Q. That is, so long as you are in charge?

A. No, I don't take any credit for it whatever. It is the policy of the board to assess no more taxation on the total benefits that is necessary to retire the matured bonds that year and a small amount for overhead and maintenance of the road.

Q. There must be maintenance?

A. Some maintenance.

Q. The life of the board continues perpetually?

A. Yes, this board continues.

Q. This new bond issue we referred to a minute ago is to make a concrete road?

A. On the state line, and we look also to have one to Fulton. We tried to get it. Your son as Senator tried to get it but by the defeat of the amendment to the Constitu-ion we can't have it.

The Court: The father destroyed the efforts of the son?

A. Yes, sir, he certainly did.

Q. The levy was made annually?

A. Yes, sir.

Q. There has no levy been made through future years?

A. No, sir.

Q. Every year you make a levy such as the board concedes to be necessary?

A. Necessary to retire bonds, interest and small amounts for overhead and maintenance.

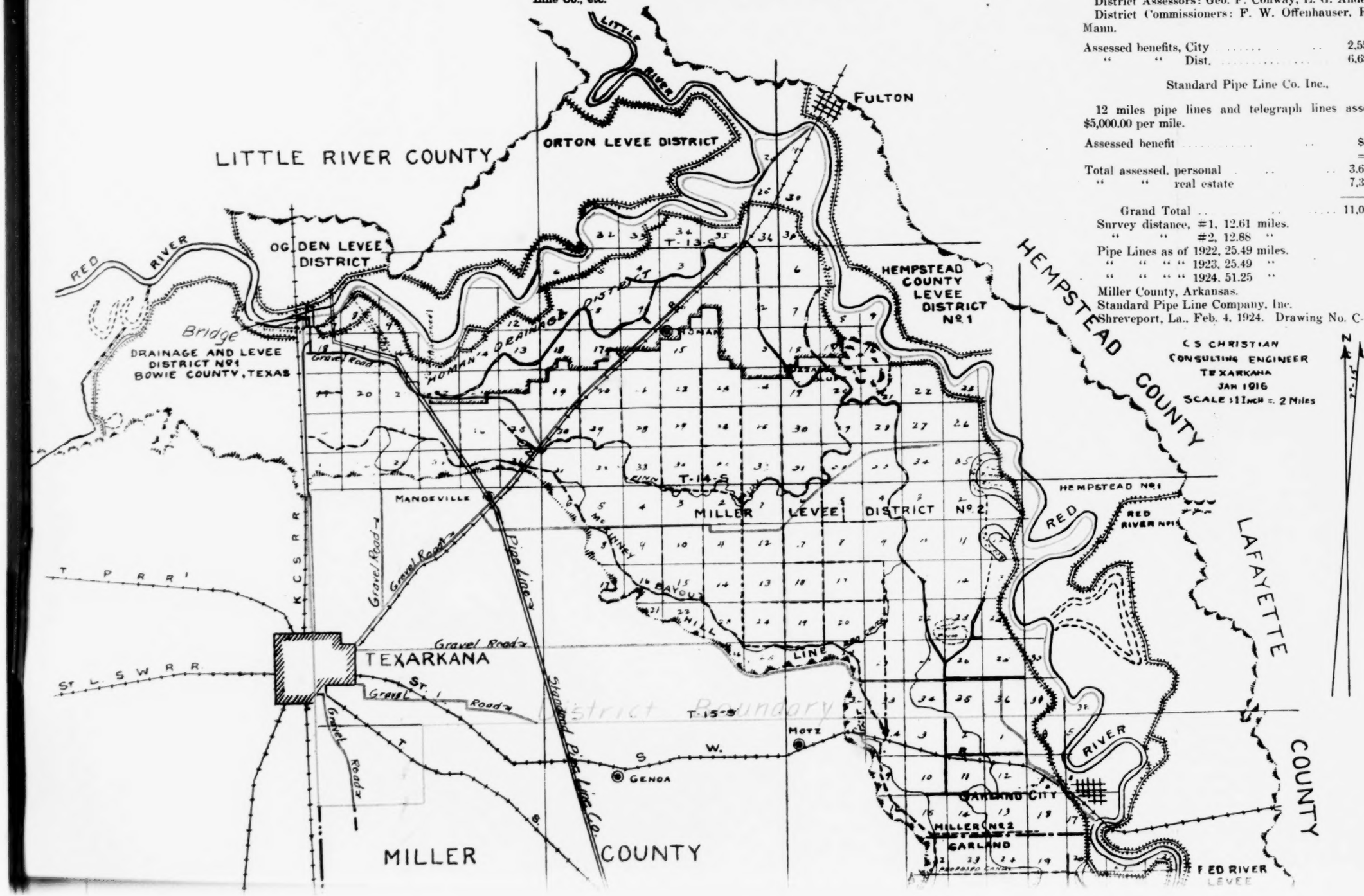
Q. So it is with the Board how much they shall assess each year?

A. Yes, sir.

By Mr. Moore:

Q. Under the present Harrelson Act what amount are you to receive out of the Miller County Highway and Bridge District?

Map of Miller County, Arkansas, Showing Location of Miller Levee District No. 2 and Lines of Standard Pipe Line Co., etc.



Miller County Highway District

Reassessment, filed July 24, 1920.
District Assessors: Geo. F. Conway, E. G. Anderson.
District Commissioners: F. W. Offenhauser, R. H. T. Mann.

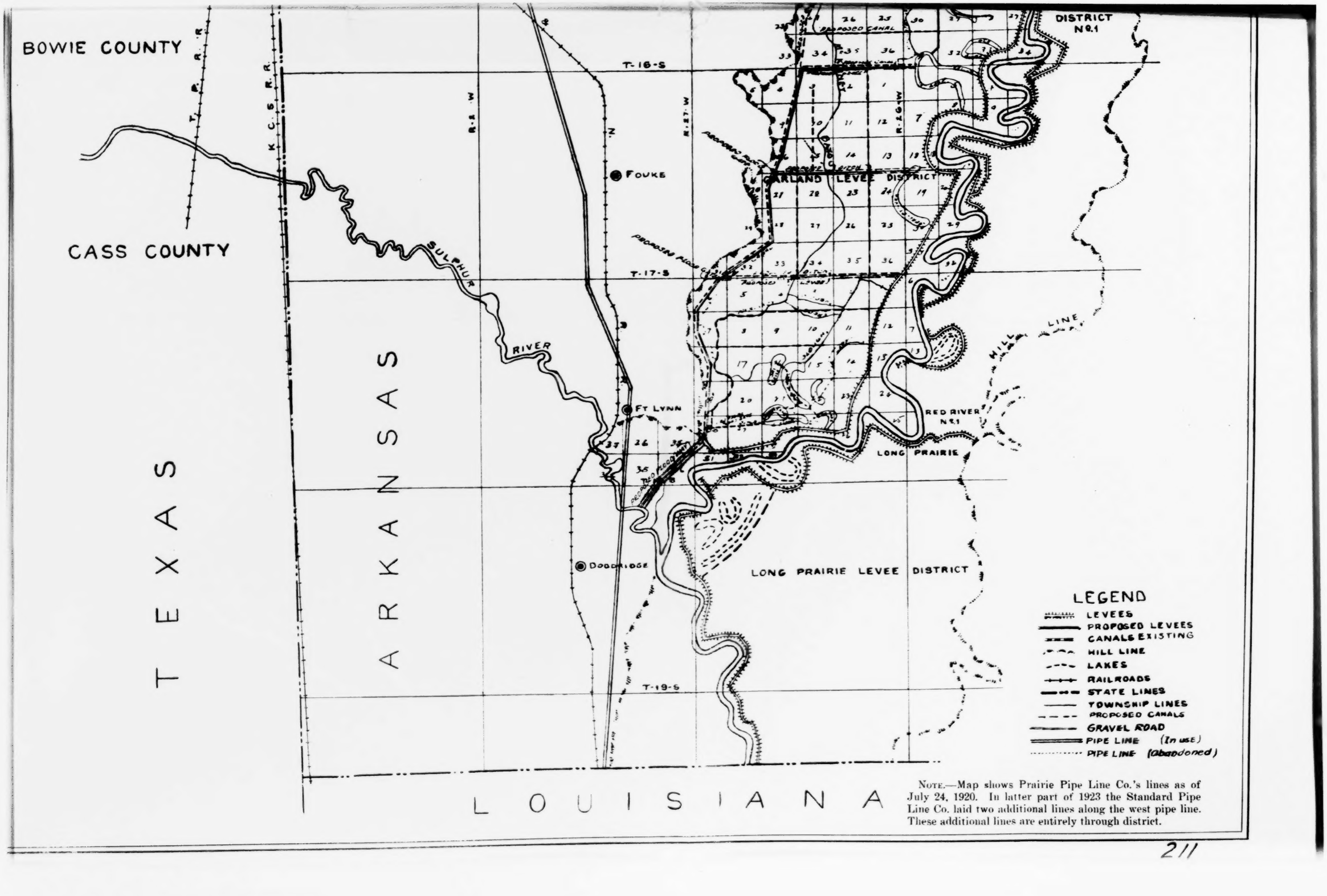
Assessed benefits, City	2,558,210.00
" " Dist.	6,687,178.00

Standard Pipe Line Co. Inc.,

12 miles pipe lines and telegraph lines assessed at $5,000.00 per mile.

Assessed benefit	$60,000.00
Total assessed, personal	3,650,291.00
" " real estate	7,345,265.00
Grand Total	11,001,555.00

Survey distance, #1, 12.61 miles.
" " #2, 12.88 "
Pipe Lines as of 1922, 25.49 miles.
" " " " 1923, 25.49 "
" " " " 1924, 51.25 "
Miller County, Arkansas.
Standard Pipe Line Company, Inc.
Shreveport, La., Feb. 4, 1924. Drawing No. C-132.



NOTE.—Map shows Prairie Pipe Line Co.'s lines as of July 24, 1920. In latter part of 1923 the Standard Pipe Line Co. laid two additional lines along the west pipe line. These additional lines are entirely through district.

A. As received last year and has been certified to July 1st, this year, fifty per cent of the total. That is allocated [fol. 210] to the highways of Miller County, the other half going to the County Judge.

Q. To what amount?

A. $13,710.60 was the first payment.

Q. And for that reason the board reduced the taxes against the tax payers 15% this coming year?

A. The amount we will get this year is $21,000 or $22,000, and *by* that reason the taxes will be reduced for the next year.

Q. With reference to the new issue that Mr. Arnold has brought out, I think it is only fair to state there will be no [principle] retired, there will be only interest paid the first 7 years and at that time we will have matured and retired a total of [$400,-00] of the original $540,000 sold. So that, without any raise of taxes, even to the fraction of a mill, the interest on the $75,000 can be paid for the 7 years and when the $400,000 is retired this $35,000 can then step in and be retired without one raise of taxes.

STIPULATION RE PLAT OF MILLER COUNTY

It is agreed that the Plat of Miller County attached to this transcript shows the location of Miller Levee District No. 2, of the lines of the Standard Pipe Line Company, and all matters shown on the Exhibits in the form of maps as filed on behalf of both the plaintiff and the defendant.

Henry Moore, Jr., Attorney for Miller Levee District No. 2. David C. Arnold, Attorney for Standard Pipe Line Company.

(Here follows map marked side folio page 211.)

[fol. 212] This was all the evidence introduced at the trial of this cause.

ORDER APPROVING STATEMENT OF EVIDENCE

Approved as a correct statement of the evidence upon final hearing of this cause.

Frank A. Youmans, Judge.

IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL AND ORDER ALLOWING SAME—Filed September 28, 1925

Comes Miller County Highway & Bridge District conceiving itself to be aggrieved by that certain final decree made and entered on the 14th day of September, 1925, in the above entitled cause does hereby appeal from said decree to the United States Circuit Court of Appeals for the Eighth Circuit for the reasons specified in their certain assignment of errors which is filed herewith and prays that the appeal may be allowed and the transcript of those portions of the record as may be duly settled under Rule 75 of the "Rules of Practice for the Court of Equity of the United States" duly authenticated may be sent to the United States Circuit Court of Appeals for the Eighth Circuit.

Miller County Highway & Bridge District, by Henry Moore, Jr., Attorney.

Appeal allowed Sep. 28, 1925. Frank A. Youmans, Judge.

IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR—Filed September 28, 1925

Comes the defendant in the above styled cause and files this its assignment of errors upon which it will rely upon its appeal from the final decree heretofore entered herein by the District Court.

The said District Court erred in making and entering said decree and in the proceedings had in said cause prior thereto in the following particulars, to-wit:

1. The court erred in overruling the motion to dismiss in said cause filed by this defendant.

[fol. 213] 2. The court erred in finding and holding that the construction of the highway has not added and will not add anything to the value of the property of the plaintiff.

3. The court erred in finding and holding that the taxes levied, Five Thousand Dollars ($5,000.00) per mile, upon

plaintiff's right of way, pipe lines and telegraph and telephone lines is not laid upon the same plan as that allowed by law and followed in reference to other lands in the district.

4. The court erred in finding that the levy of an assessment of benefits of Five Thousand Dollars ($5,000.00) per mile is palpably arbitrary.

5. The court erred in finding that the benefits to plaintiff's property by means of the construction of the improved highway is speculative and conjectural.

6. The court erred in finding that the plaintiff is not estopped from maintaining this suit.

7. The court erred in finding that the Acts of the Legislature validating the levy of taxes and assessments made by defendant upon the property in the district did not validate the levy of such taxes against plaintiff's right of way and pipe line constructed thereon and further erred in holding that such taxes are arbitrary in so far as levied against plaintiff's property.

8. The court erred in failing to find that the assessment against the property of the plaintiff was valid and binding.

9. The court erred in not finding that the evidence introduced by the plaintiff was not sufficient to overcome the presumption of benefits raised by the Acts of the Legislature finding plaintiff's property [benefitted.]

10. The court erred in not finding that under the testimony substantial benefits was shown to have accrued to the plaintiff's property from the construction of the improved highway.

11. The court erred in not finding that the assessment of benefits laid against plaintiff's property in accordance with the Acts of the Legislature by mile rather than by acre; was, because of the different character of the plaintiff's property reasonable method of classification and assessment of benefits for road purposes.

[fol. 214] 12. The court erred in entering a decree herein in favor of the plaintiff and in failing to enter a decree herein for the defendant.

13. The court erred in failing to find both the facts and the law in favor of the defendant.

Wherefore, the defendant Miller County Highway & Bridge District, appealing prays that the decree entered as aforesaid against it may be wholly set aside; that the case between the plaintiff and defendant be remanded to the said District Court with directions to enter a decree herein in favor of the plaintiff and for such other further and different relief to which they in equity and good conscience may be entitled.

Miller County Highway & Bridge District, by Henry Moore, Jr., Attorneys.

Bond on appeal for $500.00, approved and filed October 3, 1925, omitted in printing.

[fol. 215] In the United States District Court

Precipe for Transcript of Record—Filed October 6, 1925

To William S. Wellshear, clerk of said court:

Please prepare and duly authenticate for the appeal of the defendant, Miller County Highway & Bridge District to the United States Circuit Court of Appeals for the Eighth Circuit, from the decree in the above entitled cause, entered the 14th day of September, 1925; the transcript incorporating the following portions therein and no other, to-wit:

1. Bill in Equity filed May 21, 1924;
2. Motion to dismiss, filed June 23rd, 1924;
3. Order of court overruling the motion to dismiss;
4. Bill in equity, filed as amended and substituted bill on March 20th, 1925;

[fol. 216 & 217] 5. Answer to amended and substituted bill in equity, filed April 2nd, 1925;

6. Findings of fact and law by the court, filed July 2nd, 1925;

7. All orders of the court made during the hearings of this cause;

8. Final decree of the court in this cause;

9. Statement of evidence finally approved by the court or Judge thereof (copy all testimony and exhibits);

10. The petition of the Miller County Highway & Bridge District for their appeal;

11. Assignment of errors for such appeal by above mentioned defendant;

12. The bond of the above mentioned defendant upon appeal;

13. Citations issued on such appeal showing the service thereof;

14. Notice of election of these defendants regarding the printing of record;

15. Defendant's precipe for transcript on appeal, dated at Texarkana, Arkansas, this 5th day of October, 1925.

Henry Moore, Jr., Solicitor for Miller County Highway & Bridge District.

Due service of a copy of the foregoing precipe at Texarkana, Arkansas, this 5th day of October, 1925, upon the plaintiff and appellee, the Standard Pipe Line Company, is hereby acknowledged and further service waived.

David C. Arnold, Solicitor for Standard Pipe Line Company.

Clerk's certificate to foregoing transcript omitted in printing.

[fol. 218] Appearances of counsel omitted in printing.

[fol. 219] Minute entry of argument and submission May 25, 1926, omitted in printing.

[fol. 220] In United States Circuit Court of Appeals, Eighth Circuit, December Term, A. D. 1926

No. 7338

Miller County Highway & Bridge District, Appellant,

vs.

Standard Pipe Line Company, Incorporated, Appellee

Appeal from the District Court of the United States for the Western District of Arkansas

Mr. Henry Moore, Jr., for appellant.

Mr. David C. Arnold and Mr. W. H. Arnold (Mr. T. M. Milling and Mr. W. H. Arnold, Jr., were with them on the brief), for appellee.

Before Stone and Lewis, Circuit Judges, and Symes, District Judge

Opinion—Filed April 18, 1927

Symes, District Judge, delivered the opinion of the court.

The Miller County Highway District was created by a special act of the legislature of Arkansas in 1915, and empowered to constructed 60 miles of highway and a bridge over the Red River. The usual district organization, consisting of a commission of three resident land owners was provided for, with the power and duty to appoint three assessors to assess all benefits accruing as a result of the improvements to the real property within the district, including railroads, pipe lines, etc., and all other franchises connected with the realty in said district. Later it was concluded that the bridge and roads could not be constructed within the limit of cost prescribed by the original act, to wit, 15 per cent of the value of the real property subject to assessment; so the law was re-enacted and amended by Act No. 15 of the year 1917, and additional land included. [fol. 221] This amendment ratified and confirmed the assessment theretofore made by the assessors, and provided for a similar assessment on the new lands, and increased the authorized mileage to 75 miles.

Under a third act relating to this district, being number 83 of the year 1925, the legislature declared that the assessments for benefits made by the district to be just, equitable and proportionate, and ratified the same.

By the original act notice of the assessment was required to be given by publication, and that the notice must set a date not less than 30 days distant, when complaints by any land owner, etc., may be heard. It was made the duties of the assessors to correct any inequality, etc. in assessments and increase or decrease the same, provided the total amount of the assessed benefits be not diminished. Full right of appeal from the action of the assessors was given to the commission, and thence to the county court. Compare House v. Rd. Imp. Dist. No. 2, Conway Co. (Ark.), 251 S. W. 12, Aff. 266 U. S. 175.

In 1922, and after the assessment of benefits had been made, the appellee here, plaintiff below, purchased from the Prairie Pipe Line Co., all of its property within the district and the state, and is now owner of certain pipe lines laid beneath the surface of the earth in the district, as a part of a continuous line running from Oklahoma through Arkansas to Louisiana. It does no business within the district, other than to maintain and operate its pipe line as part of an interstate system.

On May 21, 1924, it instituted this suit to enjoin the collection of any taxes upon an assessment of benefits of $60,000 made against its property; on the following grounds:

First, the property of the appellee within this district, is personal property not subject to local improvement assessments.

Second, it's pipe lines are in no manner benefited by the improvement.

Third, the alleged assessment is wholly arbitrary, discriminatory, etc., and violates the 14th Amendment to the Federal Constitution.

Fourth, that it is engaged exclusively in the transportation of petroleum as a common carrier for hire in interstate commerce, and the assessment constitutes an unlawful burden thereon.

[fol. 222] A decree in its favor was entered in the lower court, and the district appeals. Taking up the points made by the appellee in order—

First, the defendants's pipe line is real property included in the district for same reasons, according to the state authorities that rights of way railroad companies are included. See Missouri Pac. v. Connelly Bridge District, 142 Ark. 11, and compare Western Union Telegraph Co. v. Road Imp. Dist. No. 1, 222 S. W. 716, Standard Pipe Line Co. v. Index Sulphur Drainage Dist., Supreme Court of Ark., March 28, 1927. It will be noted that the legislative act creating the district expressly provided for the assessment of pipe lines.

Second and Third. Are the pipe lines or the property of the appellee in any manner benefited by the improvement of the roads and the building of the bridge; and is the alleged asessment wholly arbitrary and discriminatory, etc.? This question is not free from difficulty, and we find a mass, or rather wealth of authority thereon, both in this Court and in the Supreme Court of the United States. Appellee contends, and the lower court found, that the highway had not added, and will not add anything to the value of the plaintiff's property, or increase its revenue, the alleged benefits being at best speculative and conjectural only.

To the layman the direct benefits accruing to the pipe line as such, by reason of the construction of good roads, are not apparent. They do not bring appellee any new business, as it solicits none, and there is none available to it within the district or state. It obtains all its oil in Texas or Oklahoma, and conveys it through Arkansas to a terminus in Louisiana. Nor does it have any revenue from any source within the state. Its officers and employees took the witness stand and gave as their conclusions that it made absolutely no difference to the company whether it had the improvement or not.

These and other witnesses called by appellee testified, however; that when they put in two additional lines they used the new roads for hauling pipe and unloading it adjacent to the right of way; that the new roads resulted in great economies in time and cost, both in laying and repairing the line and in affording access to the same. Other

witnesses testified that on the occasion of a fire at appellee's pumping station, the Texarkana fire department, at its request, arrived in time to be of material assistance; that without the good roads they would not have attempted the run and risked the damage to equipment and danger to [fol. 223] the lives of the firemen that would have resulted; and that appellee generally used the new roads for heavy loads between certain points in preference to the existing dirt roads, though the latter were shorter and more direct.

Several farmers living in the district testified that the quality or size of their crops were not, of course, affected by the improvements, and that the only advantage of good roads to them was the factor of transportation and accessibility. The adoption of appellee's argument on this feature of the case would, with a few exceptions, perhaps, inevitably and logically require the lifting of the burden of assessment from every class of property sought to be assessed. Kansas City Ry. v. Rd. Dist. No. 3, Sevier Co., 266 U. S. 379, at 387.

The original act provides an opportunity for all the property owners aggrieved to appear before the board of assessors and have a hearing, with right to appeal to the commission, and from the commission to the county court. The appellee never availed itself of this remedy. They say that because they were a non-resident corporation they are not bound thereby. The record shows that they had local employees in the district, including a taxing officer, charged presumably with the duty of looking after tax matters. Their predecessor in title, the Prairie Company, paid three or four installments of these taxes without protest. There is testimony that Mr. Helford, who at one time had charge of the pipe line property in Miller County, knew the assessments were being made. Another witness testified that a letter was written by the tax commission to the pipe line company, giving them the information as to both the county, state and road taxes, under date of April 5, 1917, receipt of which was acknowledged.

While the authorities have not always been in harmony on this question, the cases now hold that the legislature of the state may organize special improvement districts and delegate full authority to local bodies, as was done in the instant case. If the proceedings are not void on their face,

and the procedure follows the statute, their action in assessing benefits cannot be assailed unless they are so palpably arbitrary as to present a plain case of abuse of power. The judgment of the state legislature in such matters is entitled to the highest respect, and to make a case under the 14th Amendment it must be shown that the benefits assessed are either wholly vague and speculative, or result in manifestly gross inequality when compared with the burdens.

[fol. 224] It may be observed that the procedure by which the value of the particular property of the appellee was arrived at and the amount of the benefits determined, does not commend itself to us as altogether fair, nor is the tax imposed against appellee entirely equitable as between it and other property owners within the district; but this, standing alone, is not decisive of the question. In Kansas City Sn. R. R. Co. v. Road Dist. No. 3 of Sevier County, 266 U. S. supra, the court discussed an almost identical statute, in which constitutional objections similar to those here presented were urged by the railroad company. The Court said:

"By a lone line of decisions in this Court it has been settled that, where the state constitution as construed by the state court of last resort does not provide otherwise, the legislature of a state may require that the cost of a local public improvement, such as the construction or reconstruction of a public road, be distributed over the lands particularly benefited and charged against them according to their value, their area or the benefits which they will receive; may itself determine what lands will be benefited and in what proportions they will share in the benefits, and may avail itself, for the purposes of that determination, of any information which it deems appropriate and sufficient, including such as may be afforded by reports and estimates made in prior assessment proceedings having the same object. Only where the legislative determination is palpably arbitrary, and therefore a plain abuse of power, can it be said to offend the due process of law clause of the Fourteenth Amendment. Spencer v. Merchant, 125 U. S. 345, 355-357; French v. Barber Asphalt Paving Co. 181 U. S. 324, 338, et seq.; Houck v. Little River Drainage District, 239 U. S. 254, 262,

265; Myles Salt Co. v. Iberia Drainage District 239 U. S. 478, 481; Branson v. Bush, 251 U. S. 182, 189; Valley Farms Co. v. County of Westchester, 261 U. S. 155, 163. And only where there is manifest and unreasonable discrimination in fixing the benefits which the several parcels will receive can the legislative determination be said to contravene the equal protection clause of that Amendment. Kansas City Southern Ry. Co. v. Road Improvement District No. 6, 256 U. S. 658; Thomas v. Kansas City Southern Ry. Co., 261 U. S. 481."

In Valley Farms Co. v. County of Westchester, supra, it was sought to cancel an assessment upon real property levied to construct a trunk sewer, which admittedly could not be utilized to benefit plaintiff's land until a system of [fol. 225] costly connecting sewers, not yet planned, were built. But because all lands within the district might ultimately be connected with some portion of the sewer, the court held that it could not be said the plaintiff derived no benefits therefrom, and reaffirmed the rule that the legislature may fix the basis of taxation or assessment of improvements, and its action could not be assailed under the 14th Amendment unless it was palpably arbitrary and a plain abuse. Quoting Houck v. Little River Drainage Dist. 239 U. S. 254. And, further, that "To justify an assessment it is not essential that the benefits be direct or immediate."

In Milheim v. Moffat Tunnel Dist., 262 U. S. 710, the Court said, p. 721:

"if a proposed improvement is one which the State has authority to make and pay for by assessments on property benefited, the legislature in the exercise of the taxing power has authority to determine by the statute imposing the tax, what lands may be and are in fact benefited by the improvement; and if it does so, its determination is conclusive upon the owners and the courts and cannot be assailed under the Fourteenth Amendment unless it is wholly unwarranted and a flagrant abuse, and by reason of its arbitrary character is mere confiscation of the particular property."

And, p. 723:

"Where a city charter gives property owners an opportunity to be heard before a board respecting the justice and validity of local assessments for proposed public improvements and empowers the board to determine such complaints before the assessments are made, parties who do not avail themselves of such opportunity cannot be heard to complain of such assessments as unconstitutional." Citing many other cases.

See also Missouri Pac. R. R. Co. v. Western Crawford Rd. Imp. Dist., 266 U. S. 187". And, finally, in Browning v. Hooper U. S. S. Jan. 4, 1926, the Supreme Court said:

"Where a local improvement territory is selected, and the burden is spread by the legislature or by a municipality to which the State has granted full legislative powers over the subject, the owners of property in the district have no constitutional right to be heard on the question of benefits."

[fol. 226] The Thornton case, 291 Fed. 518, and the Miller Levee Dist. case, 292 Fed. 474, in this Circuit, and Kansas City Sn. R. R. Co. v. Road Imp. Dist. No. 6, 256 U. S. 658, and Myles Salt Co. v. Iberia Drainage Dist., 239 U. S. 478, come within the exceptions pointed out by the above cases. For instance, in Kansas City Sn. R. R. Co. v. Road Imp. Dist., 256 U. S. supra, the Court found that the benefits assessed against the railroad disregarded both area and position, and were made without disclosing any basis therefor, and that the discrimination was so palpable and arbitrary as to amount to a denial of the equal protection of the law. Likewise in the Myles Salt Company case, supra, the discussion assumed as a fact that the property of the complainant taxed was included within the district, not for its benefit, but for the sole purpose of obtaining revenue therefrom, and that it was not possible to give it any of the benefits of the drainage.

The tendency of these very late authorities is to greatly narrow the constitutional grounds of objection to assessments of this character. They forbid us to weigh the benefits against the burdens, and require us to hold in the instant case that under all the circumstances there was sufficient justification for the legislative determination that appellee's property was benefited.

Fourth. Under this point appellee claims the assessment constitutes an unlawful burden on interstate commerce, and devotes its supplemental brief largely to this question. The authorities presented, however, are clearly distinguishable, dealing, as they do, with so-called "burdens" on interstate commerce; such as license fees, privilege taxes and other regulatory statutes, compliance with which is a condition precedent to doing business within the particular state. The assessment here is what is denominated as a general improvement tax, laid against the real property owned by appellee within the district on an ad valorem basis.

The rights of state or local authorities to levy general improvement taxes or assessments as such against all real property of corporations, foreign or domestic, having its situs within the state, irrespective of its use, so long as it is all treated alike, and the tax is not a burden or regulation of interstate commerce as such, cannot be doubted. The distinction is so clear and well established that extended discussion is unnecessary. Postal Telegraph-Cable Co. v. [fol. 227] Adams, 155 U. S. 688; Alpha Cement Co. v. Massachusetts, 268 U. S. 203; Union Tank Line v. Wright, 249 U. S., at 282; American Mfg. Co. v. St. Louis, 8 Fed. (2d) 447.

We are of the opinion that the decree of the lower court should be reversed, and it is so ordered.

[fol. 228] In United States Circuit Court of Appeals, Eighth Circuit

[Title omitted]

Decree—April 18, 1927

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Western District of Arkansas, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged and decreed by this Court, that the decree of the said District Court, in this cause be, and the same is hereby,

reversed with costs; and that Miller County Highway and Bridge District have and recover against the Standard Pipe Line Company, Incorporated, the sum of —— Dollars for its costs in this behalf expended and have execution therefor.

[fols. 229-238] Petition for rehearing, covering 10 pages, filed June 6, 1927, omitted from this print. It was denied and nothing more by order July 12, 1927.

[fol. 239] UNITED STATES CIRCUIT COURT OF APPEALS

ORDER DENYING PETITION FOR REHEARING—July 12, 1927

This cause came on this day to be heard upon the petition for a rehearing, filed by Counsel for Appellee.

On consideration whereof, it is now here ordered by this Court, that said petition for a rehearing of this cause, be, and the same is hereby, denied.

[fol. 240] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 241] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed November 21, 1921

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Eighth Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

End